145-492

RECORD, CASE No. 13,583.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 379.

MICHAEL McDONALD, APPELLANT,

vs.

GEORGE BELDING AND AMANDA BELDING, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JULY 19, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 27, 1891.

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1 Be it remembered that on the 19th day of December, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Frank Flynn and Michael McDonald, defendants, by John McClure and John M. Moore, Esqs., their solicitors, and filed on the chancery side of said court a transcript from the Garland circuit court, entitled Geo. Belding and Amanda Belding, his wife, *vs.* Frank Flynn and Michael McDonald; which transcript is in the words and figures following, to wit:

Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, His Wife, Plaintiffs,
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Defendants.

Complaint in Equity.

The plaintiffs, George Belding and Amanda Belding, state that on the 24th day of April, 1874, they were in the possession of a tract of land situated in the Hot Springs reservation, in Garland county, Arkansas, embracing, among other lands, what is now known and designated as lot numbered nine (9), in block sixty-eight (68), of the city of Hot Springs, in said county and State, and of said reservation; that on said day they let, leased, and demised to the defendant Frank Flynn, by lease signed by them and him, a copy of which, marked Exhibit "A," is annexed to and made part of this complaint, the land now designated as said lot number nine (9), and delivered to him the possession thereof for the term of five years next following said date; that the plaintiff- stipulated in said lease that the obligation of said defendant to pay rent to them, which was fixed by said lease at two hundred dollars ($200.00) a year, payable quarterly, should cease whenever plaintiffs should be unable
2 to protect and keep him in the possession and enjoyment of said lot on the account of the action of their creditors or the creditors of either of them, or of the paramount title of the United States or of any other person, and that the said defendant should have the right to remove any and all buildings and improvements made by him on said lot any time within thirty days after the expiration of the term, with a proviso that there should be no such removal while the rent or any part of it should be due and unpaid; that said defendant in and by said lease stipulated and bound himself by covenant, as well as his representatives, to waive and renounce all benefit that might accrue to him or them in the way of title to said lot by virtue of occupancy or settlement, and to hold it only as the tenant or tenants of plaintiffs.

That said reservation had not then been laid out into lots and blocks, but that the land described in said lease is identical with said lot as afterwards laid out and designated by the Hot Springs commissioners, appointed by the President of the United States pursuant to the act of Congress of the United States entitled "An

act in relation to the Hot Springs reservation, in the State of Arkansas, approved March 3rd, 1877," and afterwards reappointed under a subsequent act in relation to the same subject.

That the original of said lease is held subject to the inspection of the court and leave of reference thereto prayed as often as may be necessary; that at the date of the making of said lease plaintiffs were in the possession of said lot and had it enclosed, and that defendant under said lease obtained the possession of it, and that he never had any possession of it except as their tenant; that it was at the date of said lease believed by plaintiffs and said defendants that the fee of said land was in the United States, and that the occupants thereof would at some time in the future be permitted to purchase it or obtain title to it for a small consideration, and that the said stipulation of said defendant to hold said lot as their tenant only was intended by him and them to continue in them the right
3 of occupancy free from any adverse claim by him, and that but for this stipulation said defendant would, as he then well knew, never have been let into possession of said lot; that under said act of Congress A. H. Cragin, John Coburn, and M. L. Stearns were appointed commissioners to carry out and execute the provisions thereof, and that they duly qualified as such.

That within six months from the organization and first sitting of said commissioners and within the time prescribed by said acts the plaintiffs, in the name and behalf of plaintiff George Belding, filed, before and with — time, a petition and claim praying them to award said plaintiff the right to purchase said lot from the United States, said petition which was in the name of said plaintiff embracing the land now designated by said lot and also other lands; that said petition was based upon the occupancy and improvements of and upon said land, including said lot; that said defendant also filed with and before said commissioners a petition and claim wherein he prayed them to adjudicate to him the right to purchase said lot or the land now designated thereby from the United States.

That said commissioners consolidated said claims for the purpose of hearing the evidence and of trying them; that the evidence taken in support of said defendant's said claim clearly showed all of the facts above set forth to be true and conclusively established said tenancy under said lease and stipulations, and that the testimony introduced in support of said plaintiffs' petition, including said lease which was introduced and read in evidence, was to the same effect and conclusive of the allegations of said claim; that said commissioners nevertheless misconstrued and mistook the law applying to said petitions and evidence, and wrongfully awarded the right to purchase said lot from the United States to said defendant instead of to said plaintiff as they should have done.

That said commissioners under said act assessed against said land as the price to be paid the United States therefor an inade-
4 quate sum less than one-twentieth of its value, and that said defendant has since said award and by reason thereof purchased said lot from the United States at a sum less than one-fortieth part of its value, and has obtained a patent therefor in his

own name; that said defendant has ever since then ignored the rights of plaintiffs and of each of them, and that both he and his codefendant McDonald refuses to convey said lot to plaintiffs or to said plaintiff George; that said defendant Flynn is in possession of said lot, and has never in fact been dispossessed of it since the execution of said lease, and has never paid rent for said lot to any one but plaintiffs, and has paid them no rent for it since the 25th day of October, 1875.

That there is now due to plaintiffs as rent for said lot over seventeen hundred dollars ($1,700); that ever since the award of said lot by said commissioners, which was in 1879, said lot has been reasonably worth an annual rent of at least five hundred dollars ($500); that plaintiffs do not know how much said defendant paid the United States for said land, but they charge and believe that it was less than three hundred dollars ($300); that said defendant Flynn has recently executed to the defendant Michael McDonald, without consideration and for the purpose of defrauding plaintiffs, a fraudulent deed of conveyance purporting to convey said lot to him for eight thousand five hundred dollars ($8,500), when, in fact, nothing was paid by him for it; that defendant McDonald knew at the time of the making of said deed and of the said pretended purchase of the tenancy of the said defendant Flynn as aforesaid and of the rights of plaintiffs.

That a copy of said deed is annexed to and made part of this complaint and marked Exhibit "B;" that the copy of said petition and claim of said defendant Flynn before said commissioners and of the evidence in support of it and of the proceedings, finding, decision, and award thereunder and thereon before and by said commissioners is annexed to and made part of this complaint as Exhibit "C."

Plaintiffs offer to pay defendants or either of them whatever sum of money they or either of them may have paid the United States either by delivering it to them in cash or by *by* bringing it here into court for them or by allowing it as a credit upon what may be due them for the rent of said lot, as the court may direct; and they further offer to pay whatever may be required of them in the premises.

Plaintiffs further say that they are husband and wife to each other, and were at the making of said lease, and that it was for this reason that said petition before said commissioners was presented in the name of George instead of their joint names. Plaintiffs pray that an account be taken between them and defendants, and especially defendant Flynn, of the rents due plaintiffs or plaintiff George for said lot and of the money paid by defendants or either of them to the United States for said land; that a balance be struck and a decree rendered therefor accordingly; that said deed from defendant Flynn to defendant McDonald be held fraudulent and void and be cancelled, and that defendants and each of them be decreed to hold said lot in trust for plaintiffs or for plaintiff George and to convey

it to them or him as the court shall deem proper, and for such other and further relief as the court may deem just.

W. L. BELDING,
Sol. for Plaintiffs.

The plaintiff George Belding says he believes the statements in the foregoing complaint are true.

GEO. BELDING.

Subscribed and sworn to before me this 25th day of August, 1884.

W. L. BELDIN, [SEAL.]
Notary Public, in Garland Circuit Court.

GEO. BELDING and AMANDA BELDENG, Pl'ffs,
vs.
F. FLYNN and M. C. McDONALD.

6 It appearing from the affidavit of the plaintiff that the defendant M. C. McDonald is a non-resident of the State of Arkansas, therefore J. J. Moore, Esq., is hereby appointed attorney for said non-resident defendant to notify him of this action and to defend for him herein.

Z. BELDIN, *Clerk.*

August 25th, 1884.

I do hereby accept the above appointment.

JOHN J. MOORE.

August 25th, 1884.

EXHIBIT "A."

This indenture, made the 24th day of April, A. D. 1874, between George Belding, as agent, and Amanda Belding, wife of said George Belding, of Hot Springs, Garland county, Arkansas, party of the first part, and Francis Flynn, of said town, county, and State, the party of the second part, witnesseth:

That said parties of the first part have this day leased, devised, and let, and do hereby lease, devise, and let, unto the party of the second part, his executors, administrators, and assigns, a certain parcel of land situated at what is known as the "Hot Springs reservation," in the town of Hot Springs, in the county of Garland, in the State of Arkansas, bounded and described as follows, to wit: Commencing at the northwest corner of the plank fence enclosing the front yard of the "residence" of the parties of the first part, running north forty-five feet along the fence (made of plank standing upright) to a small persimmon sapling, thence south forty-five feet to the yard fence aforementioned, thence west along said yard fence ninety-five feet to the place of beginning; to have and to hold the said premises, with the appurtenances, unto the party of the second part, his executors, administrators, and assigns, for the term of five years from the 25th day of April, A. D. 1874, at the yearly
7 rental of two hundred dollars, payable quarterly in advance, the first payment to be made on the 25th day of April,

1874, payable at said lessors' residence in Hot Springs, Arkansas; provided, however, lessee's obligation to pay rent shall cease when lessors are unable to protect and keep said lessee in possession of the premises aforesaid and in the full enjoyment thereof on account of the action of a creditor or creditors of the said George Belding or of the said Amanda Belding or on account of the asserted paramount title of the United States, or that of any other person; and it is expressly understood and agreed between the parties hereto that any and all buildings and other improvements that may be erected on said land by said lessee during his said term may be removed by said lessee from said land or by the agent or agents or legal representatives of said lessee at any time within thirty days after the expiration of this said term of lease; provided, however, that the lessors shall have a lien on all such buildings and improvements to secure the rent herein provided for, and no such buildings or improvements shall be removed from said land by lessee, his agent or legal representatives, while said rent or any part thereof shall remain due and unpaid; or if lessee or his legal representatives shall make default or be in arrear for said rent or any part thereof for fifteen days at any one time, the lessors may enter upon said premises or any part thereof and eject said lessee or his legal representatives therefrom and repossess themselves of the same and terminate this lease without notice or other legal process.

It is expressly agreed and understood by the parties of the first part that they shall keep an alley not less than twelve feet wide open at all times so as to give free access to the rear of said premises during the term of thes lease; and the said lessee hereby covenants, agrees, and binds himself and his legal representatives to waive all benefit that might accrue to him or them in the way of title to the said demised parcel of land by virtue of occupancy or settlement, and to hold the same only as the tenant or tenants
8 of said lessors and fully subject to the covenants herein specified.

It is further agreed by the party of the second part that neither he nor his legal representatives will underlet said premises or any part thereof or assign this lease except to a respectable person or persons without the written consent of the lessors or their legal representatives; and it is further agreed that lessee, assignee, or sublessee shall be controlled by the same restrictions, and the party of the second part covenants with the parties of the first part that at the expiration of the time in this lease mentioned he will yeild up and deliver his possession of said premises to said lessors or their legal representatives.

In witness whereof the said parties have executed this indenture in duplicate, signing their names and affixing their seals to both parts thereof, the day and year in the behalf above written.

GEO. BELDING, [SEAL.]
Agent for Amande Belding. [SEAL.]
FRANCIS FLYNN. [SEAL.]

In presence of—
F. HAMILTON.

EXHIBIT "C."

HOT SPRINGS, ARKANSAS, *August, A. D.* 1877.

In the Matter of the Claim of FRANK FLYNN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September 5th*, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copies of petition No. 330, before the Hot Springs Commission, testimony submitted in support of the same, and finding of the commission are true and literal exemplifications of the originals on file of record in this office.

9 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] N. C. McFARLAND,
Commissioner of General Land Office.

UNITED STATES OF AMERICA, }
Hot Springs Commission. }

To the Hot Springs commission:

The petitioner, Frank Flynn, now residing at Hot Springs, Garland county, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit: Fronting on the Arkadelphia road, commencing at the southwest corner of said claim and the N. W. corner of Geo. Belding's claim, on a line bearing north 15° east 61 feet, thence S. 83½ E. 207½ feet; thence S. E. 85 feet; thence in a northwesterly direction to the Arkadelphia road, the place of beginning; bounded on the north by an unknown claim, on the west by the Arkadelphia road, on the south by Geo. Belding's, lying and being in the N. W. ¼ N. W. ¼, sec. 4, T. 3 S., R. 19 W.

That the following-described improvements are situated thereon, to wit: A two-story house 16 x 45 feet, with an L 16 x 16, two stories, used by your petitioner as a residence for himself and family; that they were erected by Frank Flynn in the month of May, in the year 1874; that they are of the value of thirty-five hundred dollars.

The petitioner further says that he claims to be the owner of said premises and entitled to purchase the same from the United States upon the following grounds, to wit, by right of occupancy and improvements made prior to April 24th, 1876. Your petitioner took possession of the premises in the month of May, A. D. 1874, and erected a valuable permanent improvement thereon, to

10 wit, a dwelling-house, where your petitioner has since resided, and has been in peaceable possession of the said prem-

ises since the above date. Your petitioner has been informed that one Geo. Belding, who claimed the land prior to the occupation of the premises by your petitioner, will contest the claim of your petitioner to the said premises. Your petitioner has not recognized the said Belding as landlord since the Supreme Court of the United States decided the title to be in the United States.

(Here follows diagram marked p. 10*a*.)

11 The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof. Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States and for other proper relief.

FRANK FLYNN.

Endorsed: P. 333. No. 330. Hot Springs commission. Petition of Frank Flynn. Frank Flynn, lot 9, block 68. Filed August 18th, 1877. J. M. Anderson, clerk H. S. commission. Examined Jan. 10th, 1878. Adjudicated Oct. 6th, 1879.

HOT SPRINGS COMMISSION, *January 10th.*

In the Claim of FRANK E. FLYNN, Consolidated with GEORGE BELDING. No. 330.

FRANK E. FLYNN sworn and examined:

Q. State your name, age, and residence.

A. My name is Frank E. Flynn; I am forty-eight years old, and reside at Hot Springs.

Q. State if you have a claim pending before this commission.

A. I have.

Q. State the value of it, how long you have owned it, and where it is.

A. In April, 1874, I took possession. I put up a two-story building at a cost of between $3,400 and $3,600. There is a water-closet and cistern. I have been residing there and make it my

12 home. This is the only claim I have on the Hot Springs reservation. I am residing there now, and I built the house in 1874. The land described here is all fenced. I fenced a part of it shortly after I built it, and the other part I fenced this summer. I heard a lease read here by George Belding. That lease does not describe the land I took possession of. I took possession of more than that. I enclosed at the time more than the lease called for. The claim is 61 x 270 feet. After the Court of Claims decided that it was Government property I trespassed upon some more of the Government land. I took in this addition shortly after the Court of Claims had decided. I think it was two years ago; before the receiver came. I went on it. I put some stakes there at the time, and I fenced part of it by putting up a stone wall and a picket fence. This is the same stone wall that Mr. Belding described in his testimony in his own case. I had enclosed, when the decision

was made by the Court of Claims, about 51 feet front. There was no fence in the rear at all; in the rear it was just an open lot. On the 24th of April, 1876, I had no enclosure in the rear of my house. I had a fence in front and on the north side, and on the south was George Belding's fence, which made the boundary. There was an embankment on the side which answered as a fence. I had erected a cistern there in the rear. My water-closet is 190 feet from the front fence. I did not ask Mr. Belding's consent to temporarily put up a water-closet there. I never recognized him as landlord after the court decided that it was Government property. My building is 45 feet deep, and with a hall 16 x 16, and in the front is 16 feet, and two stories high.

WILLIAM H. BARRY sworn and examined:

Q. State your name, age, and residence.

13 A. My name is William H. Barry; I am forty years of age, and reside at Hot Springs.

Q. State what you know of the claim of Frank E. Flynn.

A. I have heard the evidence of Mr. Flynn in this case. I know the premises occupied by him now in question. I have known them ever since April 6th, 1875. The residence was there at that time. The front portion of the lot was enclosed partly by a picket fence and partly by a stone wall. There was a cistern built there during the war by Mr. Frank Flynn. The water-closet was built since 1875. It belonged to Mr. Flynn, and is about 200 feet long. Mr. Flynn has been in continuous possession ever since I knew the premises first. He resides there now.

GEORGE HOLCOMB sworn and examined:

Q. State your name, age, and residence.

A. My name is Geo. Holcomb; I am thirty years of age, and reside at Hot Springs.

Q. State what you know of the claim of Frank E. Flynn.

A. I have heard the evidence of Dr. Barry in this case. I know the property described by him, which is now the residence of Frank Flynn. I have known these premises ever since June, 1874. I am a carpenter by trade. I did some building there in 1874. I helped work on Mr. Flynn's dwelling-house, and built a cistern and water-closet on these premises. The water-closet is 185 or 190 feet from the front fence. This water-closet was built by him in 1875, in the month of July.

Endorsed: No. 330. Claim of Frank E. Flynn. Testimony of witness- W. H. Barry — Geo. Holcomb, given before the Hot Springs commission. A. H. Cragin, ch.

14 MONDAY, *December 8th*, 1877.

In the Claim of FRANK FLYNN. No. 330.

At this time comes the petitioner, Frank Flynn, and the commission, having heard and considered the petition and testimony, as also the testimony in claim No. 386, George Belding, and claim No.

731, Andrew J. Hill, do say and find that the claim of the petitioner accrued prior to the 24th day of April, A. D. 1876, by reason of the use and occupation and improvement of the premises described in the petition, and that the petitioner is the owner and entitled to the possession of the improvements made thereon; and the commission, having had the premises surveyed, and having inspected and caused the same to be platted, numbered, and scheduled, and having appraised the same as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following-described land in Hot Springs, to wit, lot numbered nine, in block numbered sixty-eight, for the sum of three hundred and fifty dollars, that being the appraised value thereof.

It is therefore ordered and adjudged that the said Frank Flynn is entitled to purchase said lot numbered nine, in block numbered sixty-eight, for said sum of three hundred and fifty dollars, and that a certificate be issued to him for the right to purchase the same, containing 14,020 feet. Commissioner Coburn dissents from the above decision. He thinks the petitioner is estopped by his contract of lease with George Belding, in which he agrees not ts set up a claim to buy this land by reason of his use, possession, and occupation of it, and that Belding is entitled to the right to purchase it under his claim.

This indenture, made the 21st day of July, in the year of
15 our Lord one thousand eight hundred and eighty-four, between Frank Flynn and Annie B. Flynn, party of the first part, and Michael C. McDonald, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of eighty-five hundred dollars ($8,500) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quitclaimed, and by these presents do remise, release, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit, lot nine (9), block sixty-eight, city of Hot Springs, county of Garland and State of Arkansas; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto pertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year above written.

FRANK FLYNN. [SEAL.]
ANNIE B. FLYNN. [SEAL.]

Signed, sealed, and delivered in the presence of—

STATE OF ARKANSAS, } ss:
County of Garland, }

I, John J. Moore, a duly commissioned and acting notary public in and for the said county, in the State aforesaid, do hereby certify that Frank Flynn, personally known to me as the same person whose name is subscribed to the foregoing instrument, ap-
16 peared before me this day in person and acknowledged that he had signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this the 2nd day of August, A. D. 1884.

[SEAL.] JOHN J. MOORE,
Notary Public.

STATE OF ARKANSAS, }
County of Garland. }

On the 28th day of July, 1884, personally appeared before me, John J. Moore, a duly commissioned and acting notary public within and for the county aforesaid, Annie B. Flynn, wife of the said Frank Flynn, and stated, in the absence of her said husband, that she had signed, sealed, and executed the same for the uses, purposes, and considerations therein mentioned and set forth without undue influence or compulsion of her said husband.

In testimony whereof I have hereunto set my hand and seal as such notary public the day and year above written.

[SEAL.] JOHN J. MOORE,
Notary Public.

Filed for record August 2, 1884, at 6 o'clock p. m.
ZEBA BELDIN, *Clerk.*

Endorsed: 349. George Belding and Amanda Belding *vs.* Frank Flynn and Michael C. McDonald. Complaint in equity. Filed August 25th, 1884. Z. Beldin, clerk.

17 Garland Circuit Court.

GEO. BELDING and AMANDA BELDING, his Wife, Pl'ffs,
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Def'ts. } Affidavit.

The plaintiff Geo-ge Belding states, to the best of his knowledge, that the defendant Michael C. McDonald is a non-resident of the State of Arkansas; that he resides in the city of Chicago, State of Illinois.

GEORGE BELDING.

Subscribed and sworn to before me this 25th day of August, 1884.
W. L. BELDING, [SEAL.]
Notary Public.

Endorsed: George Belding and Amanda Belding *vs.* Frank Flynn and Michael McDonald. Affidavit. Filed August 25th, 1884. Z. Beldin, clerk.

In the Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, His Wife, Pl'ffs,
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Def'ts. } Bond.

We undertake that the plaintiff-, George Belding and Amanda Belding, his wife, shall pay to the defendants and to the officers of this court all damage by reason of this action if the order therefor is wrongfully obtained.

18

GEO. BELDING.
E. BURGANER.

Endorsed: 349. George Belding and Amanda Belding, his wife, *vs.* Fran*d* Flynn and Michael McDonald. Bond. Filed and approved September 15th, 1884. Z. Beldin, clerk.

In the Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, His Wife, Plaintiffs,
vs.
FRANK FLYNN and MICHAEL MCDONALD, Defendants.

Separate Answer of Defendant Flynn.

The defendant Frank Flynn, answering the complaint, admits the making of the lease and the filing of the petitions by plaintiffs and by himself before the Hot Springs commissioners for the right to purchase the land, lot 9, block 68, as charged in the complaint, and that said petitions were consolidated for hearing, and that the evidence showed that he leased the land from plaintiffs, as charged, but he says that there were no stipulations or understanding between him and them respecting said land or the acquisition of *little* thereto except what the lease contains. He denies that the award of said lot to himself by the commissioners was wrongful or that they misconstrued the law or should have awarded said lot to plaintiffs.

He denies that the rent of said lot is or has been worth five hundred dollars a year or that he owes plaintiffs or either of them
19 anything on account of said rent or land. He denies that plaintiffs or either of them was in possession of said land at the date of the making of said lease or at any other time. He denies that the sale of said lot by him to defendant McDonald was without consideration or for the purpose of defrauding plaintiffs or either of them. He says that he sold said land to defendant McDonald for $8,500 because he needed the money and desired to make the sale because he thought it advantageous to him to do so. This defendant says that since said lot was awarded to him he has under said award purchased it from the United States and obtained a

patent for it, a copy of which he annexes to and makes part of this answer as Exhibit A; that he has removed his improvements from said lot and has been unable to rent said lot for any sum, and that it has lain idle and unoccupied for four years.

That he has received no rent from it; that he paid the United States for said lot $160; that he owes plaintiffs nothing, and ought not to be required to account to them; that the petition before said commissioners was based on valuable improvements which he had upon said land and on account of which said commissioners, upon the hearing, awarded him the right to purchase it from the United States. The plaintiffs never at any time had any improvements upon said land, and that if the commissioners had awarded it to them or either of them the award would have been unwarranted.

Defendant says that plaintiffs never afterwards sought to establish any claim to said lot or to disturb the award until they brought this suit on the 25th day of August, 1884, up to which time plaintiffs, and especially plaintiff George Belding, had asserted and insisted that said award and all other awards of the commission were right and ought not to be disturbed; that on the 21st day of July, 1884, this defendant, believing he had a clear title to said lot, sold it to the defendant McDonald as aforesaid and executed to him a quit-claim deed therefor.

This defendant, having answered, prays that he be dismissed with his costs.

JOHN J. MOORE,
Sol. for Def't Flynn.

20 Endorsed: No. 349. George Belding and Amanda Belding *vs.* Frank Flynn and Michael McDonald. Separate answer of defendant Flynn. Filed Oct. 7th, 1884. Z. Beldin, clerk. John J. Moore, sol.

In the Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, His Wife, Plaintiffs,
vs.
FRANK FLYNN and MICHAEL MCDONALD, Defendants.

Separate Answer of Defendant McDonald.

The defendant Michael C. McDonald, answering the complaint, says that he knows nothing of the lease alleged to have been executed between plaintiffs and his codefendant Frank Flynn, nor of the alleged relation of landlord and tenant between them, nor of the alleged proceedings before said commissioners, but that if said relation ever did exist it was dissolved in June, 1876, by the United States, through their receiver, taking possession of said land under paramount title; that defendant Flynn had then valuable improvements upon said lot, which he could not lawfully remove, and to avoid loosing them filed a petition before said commissioners setting forth that fact and praying them to award the preference right to purchase it from the United States; that he supported said petition

by evidence, and that said commissioners awarded said right
21 to him, and that he afterwards purchased said lot from the United States, and on the 21st day of May, 1881, obtained a patent for it, a copy of which is annexed hereto and made part of this answer as Exhibit "A;" that on the 21st day of July, 1884, this defendant, finding the title to said lot to be in said defendant Flynn and knowing nothing whatever of plaintiffs' alleged claim to it, bought it from him for the sum of eighty-five hundred dollars ($8,500) in cash, and obtained from him a quitclaim deed thereto; that he never heard of any claim of plaintiffs until he made said purchase and paid said money; that plaintiffs never until since said purchase sued for said lot or put any claim of record; that said deed and sale to this defendant were not made without consideration nor to defraud plaintiff-, but are made in good faith. This defendant annexes a copy of said deed to him from defendant Flynn and makes it a part of this answer as Exhibit "B."

Defendant, having answered, prays to be dismissed with cost.

JOHN J. MOORE,
Sol. for Def't McDonald.

EXHIBIT "A."

Certificate No. 199.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by virtue of the acts of Congress approved March 3rd, 1877, December 16th, 1878, and June 16th, 1880, there has been deposited in the General Land Office of the United States a certificate of the register of the land office at Little Rock, Arkansas, whereby it appears that full payment has been made by Frank Flynn,
22 of Garland county, Arkansas, and his claim thereby established and duly consum-ated in conformity to law for the lot numbered nine, in block sixty-eight, of the Hot Springs reservation, in Arkansas, according to the official plat of said reservation, returned to tte General Land Office by the commissioners appointed under the acts of Congress above referred to:

Now, know ye that there is therefore granted by the United States unto the said Frank Flynn the lot or tract of land above described; to have and to hold the said lot or tract of land, with the appurtenances thereof, unto the said Frank Flynn and to his heirs and assigns forever, subject to the proviso found in the act of December 16th, 1878, in the following words, to wit: Provided that all titles given or to be given by the United States shall explicitly exclude the right to the purchaser of the land, his heirs or assigns, from ever boring thereon for hot water.

In testimony whereof I, James A. Garfield, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the 21st day of May, in the year of our Lord one thousand eight hundred and

eighty-one, and of the Independence of the United States the one hundred and fifth.

By the President:

JAMES A. GARFIELD,
By W. H. CROOK, *Secretary.*

S. W. CLARK,
Recorder of General Land Office.

Recorded, vol. 1, page 202.

EXHIBIT "B."

This indenture, made the 21st day of July, in the year of our Lord one thousand eight hundred and eighty-four, between Frank Flynn and Annie B. Flynn, party of the first part, and
23 Michael C. McDonald, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of eighty-five hundred dollars ($8,500) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed, and quitclaimed, and by these presents do remise, release, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit, lot nine (9), block sixty-eight (68), city of Hot Springs, county of Garland, State of Arkansas; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto pertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year above written.

FRANK FLYNN. [SEAL.]
ANNIE B. FLYNN. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

STATE OF ARKANSAS, }
County of Garland, } *ss:*

I, John J. Moore, a duly commissioned and acting notary public in and for the said county, in the State aforesaid, do hereby certify that Frank Flynn, personally known to me as the same person whose name is subscribed to the foregoing instrument, appeared be-
24 fore me this day in person and acknowledged that he had signed, sealed, and *acknowledged that he had signed, sealed, and* delivered the said instrument as his free and voluntary act for the

uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this the 2nd day of August, A. D. 1884.

[SEAL.] JOHN J. MOORE,
Notary Public.

STATE OF ARKANSAS, }
County of Garland. }

On this 28th day of July, 1884, personally appeared before me, John J. Moore, a duly commissioned and acting notary public within and for the county and State aforesaid, Annie B. Flynn, wife of the said Frank Flynn, and stated, in the absence of her said husband, that she had signed, sealed, and executed the same for the uses, purposes, and consideration therein mentioned and set forth without undue influence or compulsion of her said husband.

In testimony whereof I have hereunto set my hand and seal as such notary public the day and year first above written.

[SEAL.] JOHN J. MOORE,
Notary Public.

Filed for record August 2nd, 1884, at 6 o'clock p. m.
ZIBA BELDIN, *Clerk.*

Endorsed: No. 349. George Belding and Amande Belding *vs.* Frank Flynn and Michael C. McDonald. Separate answer of defendant McDonald. Filed Oct. 7th, 1884. Z. Beldin, clerk. John J. Moore, sol.

25 In the Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, Plaintiffs, }
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Defendants. }

To the judge of the circuit court of Garland county, Arkansas, in chancery, sitting in the circuit court of said county:

Your petitioners, Frank Flynn and Michael C. McDonald, defendants in the above-entitled cause now pending on the chancery side of the circuit court of said Garland county, in which said George Belding and Amanda Belding are plaintiffs, represent and show to this honorable court that there are grounds existing in favor of both of said defendants, on account of which they are entitled to a removal of said cause to the circuit court of the United States, and to this end they present and show:

1. In behalf of the petitioners jointly that the amount or matter in controversy in the above-entitled suit, to wit, the lot described in the complaint herein filed, is of a value of over five thousand dollars ($5,000).

Your petitioners further represent and show to this honorable court:

2. On behalf of the petitioner Michael C. McDonald, that the

controversy in this suit is between citizens of different States, and that this petitioner, M. C. McDonald, was at the time of the commencement of this suit and still is a citizen of the State of Illinois; that the other defendant, to wit, the petitioner Frank Flynn, was at the time of the commencement of said suit and still is a citizen of said State of Arkansas; that the plaintiff George Belding was then and still is a citizen of the State of Arkansas, and that the plaintiff Amanda Belding was then and still is a citizen of the State of Arkansas.

And you- petitioners further show to this honorable court:

3. On behalf of the petitioner Frank Flynn, that the suit and
26 controversy in said cause is an issue arising under the laws of the United States in this: that the said petitioner, Frank Flynn, was the owner and occupant of the building and improvements on the lot in controversy, to wit, lot numbered nine, in block 68, in the Hot Springs U. S. reservation of Arkansas; that in June, 1876, said lot of land and all improvements thereon, with others in said reservation, having been taken into possession by a receiver appointed by the United States Court of Claims as the property of the United States, claiming and decreed to have paramount title thereto, said defendant rented said lot from said receiver and promised to pay rent to said receiver so long as the law required it, and, as the owner and occupant of said improvements, said defendant, Frank Flynn, prepared and presented his claim to be awarded the right to purchase said lot by reason of said improvements so made and occupied by him as aforesaid under the provisions and within the meaning of the act of Congress entitled An act in relation to the disposal of the Hot Springs reservation of Arkansas, approved March 3rd, 1877, and acts of Congress amendatory of and supplemental thereto; that his said claim was prepared and presented to the commission created under said act of Congress within the time and in the manner required thereby; that upon the proofs taken upon the hearing of said claim by said commission, which said claim was strongly contested by the plaintiffs, George and Amanda, before said commission, the defendant Frank Flynn was, by the commissioners appointed under and by virtue of the provisions of said act, while acting as such commission, awarded and given a pre-emption right and preference of purchase from said United States of said lot at the price and valuation fixed thereon by said commission, which said price was afterwards reduced by the act of Congress entitled "An act for the establishment of titles in Hot Springs and for other purposes," approved June 16th, 1880, recog-
nizing the awards and decisions of said commissioners, and
27 said defendant, Frank Flynn, thereby had the right to purchase said lot and did purchase same from the United States, as required by said acts of Congress, and held possession of and claimed same under said act of Congress until he sold and disposed of same to his codefendant Michael C. McDonald on the — day of ——, 1884.

That the plaintiffs, George Belding and Amanda Belding, claim said lot of land under some sort of pretended lease or agreement

made by them in respect to said property or lot while it was the property of the United States and wherein and whereby they claimed, because they had obtained a *quasi* possession of said lot, together with other lands belonging to said United States, although said lands which comprised and included said lot had been reserved from sale by act of Congress during the existence of said act of reservation, and while the same was in force and without holding or owning any improvements on said lot, that they could lease, bargain, and make contract in reference to said property, and collect ground rent or give possession of said grounds so belonging to said United States, claiming or pretending to claim the right to control the possession of said reserved property of the United States in violation of her laws; and so it is that the controversy in this case, as respects the petitioner Frank Flynn, arises under the laws of Congress and must be determined under their lawful and proper construction; and this suit comes, as your petitioners are advised, within the provisions of the act of Congress of March 3rd, 1875, entitled An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of cases from State courts, and for further purposes.

And plaintiffs also pretend that they have equities under the provisions of the said acts of Congress and under the State laws which recognize and protect trespassers upon the public land of the United States so reserved from sale, and that said commissioners, in making the award to the said defendant, Frank Flynn, mistook and misconstrued the law applicable thereto, and therefore the de-
28 termination of this controversy between the defendant Frank Flynn and plaintiffs George and Amanda turn upon the proper construction of the laws of the United States under and through which said defendant and said plaintiffs both claim title to said lot in said sum.

And your petitioners offer therewith a bond, with good and sufficient surety, for the entering in the circuit court of the United States on the first day of its next session a copy of the record in this suit and for praying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioners therefore pray this honorable court to make the order of removal required by law, to accept said surety and bond, and to cause the record herein to be removed into the circuit court of the United States in and for the eastern district of Arkansas; and will ever pray, &c.

JOHN J. MOORE,
Sol. for Petitioners.

STATE OF ARKANSAS, }
County of Garland. }

I, Frank Flynn, do solemnly swear that I am one of the petitioners in the above cause, and that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

FRANK FLYNN.

Subscribed by the said Frank Flynn in my presence and by him sworn to before me this 12th day of November, A. D. 1884.

Z. BELDIN, *Clerk.*

Endorsed: No. 349. George Belding and Amanda Belding *vs.* Frank Flynn and M. C. McDonald. Petition for removal to United States court. Filed November 13th, 1884. Z. Beldin, clerk. John J. Moore, sol.

29 In the Garland Circuit Court.

GEORGE BELDING and AMANDA BELDING, Plaintiffs,
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Defendants.

Whereas in the above-entitled cause, now pending in the circuit court of Garland county, State of Arkansas, in chancery, the defendants, Frank Flynn and Michael C. McDonald, have applied by petition to said court to remove said suit to the circuit court of the United States within and for the eastern district of Arkansas: Therefore know all men by these presents that I, Frank Flynn, as principal, and —— ——, as surety, are held and firmly bound unto George Belding and Amanda Belding in the sum of five hundred dollars ($500); the payment thereof, well and truly to be made unto the said George and Amanda Belding, their executors or administrators, we bind ourselves, our executors or administrators, firmly by these presents, conditioned, nevertheless, to become void if the said Frank Flynn and M. C. McDonald shall enter into the circuit court of the United States on the ferst day of the next session thereof a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly transferred thereto, and do or cause to be done such other and appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of a suit into the United States circuit court from a State; otherwise to be in full force.

FRANK FLYNN. [SEAL.]
THOMAS SHANNAN. [SEAL.]
WM. J. MCTAGUE. [SEAL.]

Endorsed: No. 349. George Belding and Amanda Belding *vs.* Frank Flynn and Michael C. McDonald. Bond for removal of cause to United States court. Filed Nov. 13th, 1884. Z. Beldin, clerk. John J. Moore, sol.

30 September Term, 1884.

Be it remembered that at a regular term of the circuit court of Garland county, Arkansas, which was begun and held at the court-house in same to his codefendant McDonald, the 22nd day of September, ——, 1884. , 1884, said day being the time

That the plaintiffs, George Belding[illegible] said court, there was present said lot of land under some sort of [illegible] Wood, judge of the 7th ju-

dicial district of the State of Arkansas, of which the said county of Garland forms a part, when the following proceedings were had, to wit:

Ordered that court be proclaimed open pursuant to law; which was accordingly done by W. F. Hously, the sheriff of said county.

And afterwards, on October 7th, 1884, the same being a subsequent adjourned day of said term of said court, among other the following proceedings were had, to wit:

AMANDA BELDING and GEORGE BELDING, Plaintiffs,
vs.
FRANK FLYNN and MICHAEL C. MCDONALD, Defendants.

Come the said parties, by their attorneys, and upon leave had said defendants, Frank Flynn and Michael C. McDonald, file their separate answers herein.

And afterwards, on November 13th, 1884, the same being a subsequent adjourned day of said term of said court, among other the following proceedings were had, to wit:

AMANDA BELDING and GEORGE BELDING, Pl'ffs,
vs.
FRANK FLYNN *et al.*, Def'ts.

Comes the said defendants, by attorney, J. J. Moore, Esq., and upon leave had said defendants file their petition and bond to remove this cause to the United States circuit court for the eastern district of Arkansas.

31 STATE OF ARKANSAS,
County of Garland.

I, Ziba Beldin, clerk of the circuit court of Garland county, Arkansas, do *t*ereby certify that the foregoing pages contain a true and complete transcript of the original papers filed and the entries of record in the case of Amanda Belding and George Belding against Frank Flynn and Michael C. McDonald as the same now appear on file in my office.

Witness my hand and the seal of said court this 28th day of November, 1884.

Z. BELDIN, *Clerk.*

Transcript fee, paid by defendant, $10.58.

Received the original lease for lands in controversy in this suit of George Belding, agent Amanda Belding, to Francis Flynn, the certified copy of the same being contained in this transcript.

Done with permission of court April 26th, 1884.

CHAS. J. GREAVES,
For R. G. DAVIES.

(Endorsed:) Filed December 19th, 1884. Ralp*r* L. Goodrich, clerk.

32 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 25th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas—the Honorable David J. Brewer, circuit judge, presiding and holding said court—the following proceedings were had, to wit:

On November 18th, 1886:

GEORGE BELDING and AMANDA BELDING }
vs. } Decree.
FRANK FLYNN and MICHAEL MCDONALD. }

Now, on this day, this cause coming on for final hearing, *and* this cause is submitted upon the complaint of plaintiffs, George and Amanda Belding, and the answer of defendants, Flynn and McDonald, and the depositions of George Belding, Michael McDonald, and George Carlin, and the evidence taken before the Hot Springs commissioner-, the petition and other record of said commissioners and the original lease; and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said bill by error and mistake of law awarded the right to purchase lot nine (9), in block sixty-eight (68), of the Hot Springs reservation of the city of Hot Springs, in the county of Garland and State of Arkansas, to Frank Flynn, the defendant hereinabove named, and issued to him a certificate of award, and in accordance with said erroneous ruling a patent has been improperly issued to said Frank Flynn; and the said Flynn and his wife, Annie B. Flynn, on the 21st day of July, 1884, conveyed the said lot or tract of land to the other defendant, Michael McDonald, by a quitclaim deed, and the court is of the
33 opinion that said defendant McDonald holds said land and said patent and deed of trust, as trustee, for the sole use of said plaintiffs.

It is therefore considered, ordered, and decreed that all the right, title, interest, and estate of the said defendants and of each and every one of them in and to said tract of land be, and the same is hereby, divested out of said defendants and each and every one of them, and the same is transferred and vested in said plaintiffs and their heirs and assigns forever, and that said defendants and each of them do make, seal, and deliver a deed or deeds conveying said lot to said plaintiffs, their heirs and assigns forever; and the defendants pray an appeal, which is by the court allowed.

And it is further ordered that this cause be referred to N. W. Cox, Esq., special master of this court, who is directed to ascertain and report to the next term of this court—

First. The value of the rent of said lot since the award of the commissioners.

Second. What amount of taxes has been paid on said lot by said defendants or either of them since the date of said award.

Third. The value of the improvements upon said tract of land at the time of said award or made therein since that date and the date of making the same, the time of removal of any improvement therefrom and by whom made and when made, and the rental value of said property from July 21st, 1884, per annum to date of their decree.

And the said master may examine witnesses touching said matter, and shall reduce the same to writing and report their testimony so taken to this court; and it is further ordered that plaintiffs do have and recover of the said defendant McDonald all their costs of suit herein; and it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and this
34 cause is reserved for further direction; and the court finds from testimony adduced that the lot in controversy is at this date of the value of six thousand dollars.

And on March 12th, 1887, as follows:

GEORGE BELDING and WIFE
vs.
FLYNN and MCDONALD. } 712.

Comes N. W. Cox, Esq., master herein, and files his report.

Which report is as follows:

In the U. S. Circuit Court, Eastern District of Arkansas.

GEORGE BELDING and AMANDA BELDING
vs.
FRANK FLYNN and MICHAEL MCDONALD. } 712.

To the honorable circuit court of the United States for the eastern district of Arkansas:

In obedience to the decree of this honorable court made Nov. 18th, 1886, in the above-entitled cause, I, on the 22nd day of February, 1887, took the testimony of such witnesses as the parties hereto produced before me to ascertain the various matters required of the master to do in said decree. Both parties were duly represented at such hearing. Such testimony is hereto attached and made part of this report. From said testimony I find—

First. That the rental value of the said lot and improvements thereon from Dec. 9th, 1879, the date of the award, to the
35 1st day of January, 1883, the date of removal of the improvements by Frank Flynn, to have been at the rate of $480 per annum (three years and 22 days) ---------- $1,452 00
Interest on same for 5 y'rs 11 mo. 9 days, 6% ---------- 407 13
That the rent value of said lot from the first day of January, '83, to July 21st, '84, to be per annum $600 (1 y'r 6 mo. 21 days)---------- 935 00

Interest on same for 2 y'rs 10 mo's 18 days, 6%	151 56
That since the 21st day of July, 1884, the rental value has been $10.00 per front foot per annum; that said lot is 60 feet front (2 years & 4 mo's)	1,400 00
Interest on same to date — decree, 6%	136 00
	$4,481 69

Second. That the taxes paid by defendant Flynn was, with the city tax of 1881 & '82, of which I have no cert.	$248 10
Amount paid by defendant McDonald, including $30, sewer tax	154 00
Interest upon amount paid by Flynn—on $248	43 98
" " " " " McDonald—$57	2 00
Total taxes and interest	448 08
Third. That the value of the improvements made upon said land by defendant Flynn and before the award was	$2,500 00

That the date of the removal of the improvements by said defendant Flynn was January 1st, 1883.

Respectfully submitted, N. W. COX, *Master.*

36 EXHIBIT "A" TO DEPOSITION OF GEO. BELDING.

STATE OF ARKANSAS, }
County of Garland. }

I, William H. Moyston, clerk of circuit court and *ex officio* clerk of the county court, do hereby certify that the appraised valuation of lot No. 9, block 68, of the city of Hot Springs, Arkansas, for the years 1881, 1882, 1883, 1884, 1885, and 1886 — the taxes thereon for said years *is* as follows, to wit:

For the year	1881,	at a valuation of	$3,000,	amount of taxes	$52 50
" " "	1882,	" " "	4,000,	" " "	70 00
" " "	1883,	" " "	2,400,	" " "	52 80
" " "	1884,	" " "	2,400,	" " "	52 80
" " "	1885,	" " "	3,000,	" " "	57 00
" " "	1886,	" " "	3,000,	" " "	57 00

As the same appears on the tax books for said years now on file in my office.

Given under my hand and seal of said court this 22nd day of February, 1887.

WILLIAM H. MOYSTON, *Clerk,*
By EDWARD REID, *D. C.*

The deposition of witnesses taken before N. W. Cox, master, appointed by the judge of the circuit court of the United States for the eastern district of Arkansas, at the law office of Messrs. Davies and Greaves, in the city of Hot Springs, in the case of George Belding and Amanda Belding, plaintiffs, against Frank Flynn and Michael McDonald, defendants, on the 22nd day of February, 1887.

Present: R. G. Davies, attorney for plaintiffs, and John McClure, attorney for defendant McDonald.

GEORGE BELDING, introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

My name is George Belding, and am the plaintiff in this
37 case. The rental value of lot No. 9, in block No. 68, city of Hot Springs reservation, since the award of the commissioners, December 9th, 1879, up to the removal of the improvements which were made by Frank Flynn, on or about the 1st of January, 1883, was worth $40 per month, and would be cheap at that. Since the removal of the improvements and up to July 21st, 1884, the lot has been worth at least ten dollars per foot per year, or $600 per year. Since the 21st of July, 1884, the rental value of said lot has been $10.00 per foot yearly rent. The amount of taxes paid on said lot *of* $342.10, as shown by the collector's books—a certified copy of the same by the county clerk is herewith filed and made part hereof as Exhibit "A;" that the amount paid by said Flynn was $228.10, and by McDonald $114.00. The value of said improvements made upon said tract of land at the time of said award were worth $2,500. There have none been made since that date. These improvements were made about June 1st, 1874.

The amount paid by Frank Flynn to the Government for said lot was $140, which was on the — day of ——, 18—, the date of the first receipt, as shown by the records of the U. S. Land Office.

Cross-examination:

Ques. Has said lot been occupied by any one since July 21st, 1884, or has the same any improvements upon it which could have been occupied during said period—that is, from July 21st, 1884, to the present time?

Answer. No, sir. There are no improvements upon it that amount to anything. There are some two or three little cabins upon the back part of it, one of which has been occupied all of the time, and perhaps one of the others; but they are of not much value.

Question. What would these improvements have rented for per month?

Answer. I do not know. They might have rented for two or three dollars apiece per month.

Redirect examination:

38 Frank Flynn removed the improvements from the lot to lot 11, block 105, where his family now reside or did a short time ago.

GEORGE BELDING.

George Belding comes and admits that the defendant McDonald has paid one yearly assessment to sewer district No. 1 of $30.

GEORGE BELDING.

I, N. W. Cox, master in the above-entitled cause, certify that the above and foregoing deposition of George Belding was taken before me at the time and place in the caption mentioned; that it was reduced to writing by me in his presence and read over to him and by him subscribed in my presence.

N. W. COX, *Master.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit: On November 4th, 1887—

GEORGE BELDING *et al.*
vs.
FRANK FLYNN *et al.* } 712.

Comes the defendant M. McDonald, by John McClure, Esq., his solicitor, and files herein his exceptions to report of master.

39 Which exceptions are as follows:

GEORGE and AMANDA BELDING
vs.
M. MCDONALD *et al.*

Now comes the defendant McDonald and excepts to the master's report herein and for exception states:

1st. That the property the rental value of which was the subject of the inquiry before the master was a tract or lot of land 45 x 90 feet; that it was unimproved save by a cabin and use- for residence purposes alone; that the rental value of the cabin was two dollars per month; that defendant purchased the same on the 21st day of July, 1884, and that the master finds that the rental value of the said unimproved lot is $600 per annum for the period of two years and four months; that the said finding is wholly unsupported by evidence, is excessive and exorbitant and more than the property

would have rented for if it had been used and occupied for business purposes.

2nd. The said master fails to credit the defendant- or either of them with the price paid to the United States for the lot in controversy.

JOHN McCLURE,
For McDonald.

(Endorsed:) Filed Nov. 4th, 1887. Ralph L. Goodrich, clerk.

The following final depositions were read on the final hearing:

EXHIBIT "A" TO DEPOSITION OF GEORGE BELDING.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed pages from 1 to 32, inclusive, *is* a correct transcript of the petition, testimony, and plat of survey in the case of George Belding claim, No. 386, Hot Springs, Arkansas, and *is* a true and literal exemplification of the record and original papers now on file in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. A. J. SPARKS,
Commissioner of General Land Office.

UNITED STATES OF AMERICA:

HOT SPRINGS COMMISSION,
HOT SPRINGS, ARKANSAS, *June 22nd, A. D.* 1877.

In the Matter of the Claim of GEORGE BELDING.

To the Hot Springs commissioners:

The petitioner, George Belding, now residing at Hot Springs, Garland county, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Clyde claim, with a line running S. 87½° W. 155 feet; on the west by the Arkadelphia road, with a line running S. 79½° W. 97½ feet; thence S. 8° 45 W. 180 feet; thence S. 4° 15 W. 280 feet; thence S. 82° E. 310 feet; thence S. 4° 15 W. 165 feet; thence N. 54° 45 E. 115 feet; thence N. 76° 5 E. 130 feet; thence S. 81° 25 E. 76 feet; thence N. 50° W. 90 feet; thence N. 46° E. 175 feet; thence N. 50° W.
41 385 feet; thence N. 40° W. 150 feet; thence N. 14° W. 132 feet; thence N. 23° W. 25 feet, to the place of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of section 33, T. 2 S., and the N. W. ¼ of the N. W. ¼ of section 4, T. 3 S., R. 19 W.

That the following-described improvements are situated thereon, to wit: One dwelling-house and outhouses, wagon yard, occupied

by claimant, one dwelling-house occupied by Frank Flynn, about one-half of John Graves' improvements, a part of the improvements occupied by Walter Jones, one storehouse occupied by Jones & Hill; that they were erected by claimant, except Flynn's, Graves', and Mollie Jones', in the month of ——, in the year 1858, and afterwards.

That they are of the value of two thousand dollars. The petitioner further says that he claims to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit: That he purchased from Lawson Runyon and enclosed it in the year 1858; that since the war he has again enclosed it with a good fence; that most has been for several years improved and in cultivation; that he had full and peac-able possession of the entire tract on the 24th of April, 1876, and for many years prior thereto and all of the time since.

He knows of no adverse claimants except Frank Flynn for a small lot, which appears on the map; Mollie Jones a small lot, and John Graves a small lot.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof.

Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States, and for other proper relief.

GEO. BELDING.

OFFICE COUNTY OF HOT SPRINGS RESERVATION.

I, George Belding, do hereby release and quitclaim to Mary Irons all that portion of the lot situated between her claim and that of Rosa Loeb, running back one hundred and twenty feet or as far as that of Mary Irons, which lot is a part of the premises herein described and claimed.

42

GEORGE BELDING.

Attest: JOHN COBURN.

Endorsed: No. 386. Hot Springs commission. Petition of George Belding. Filed September 7th, 1877. W. Anderson. B. F. Rice, clerk H. S. commission. Examined Jan. 10th, '78. Adjudicated Dec. 8th, 1879. Record B, p. 498.

BEFORE THE HOT SPRINGS COMMISSION, *February 18th*, 1878.

In the Matter of the Claim of GEO. BELDING. No. 386.

Now comes said George Belding in person and represents to your hon. commission that your petitioner, George Belding, has been in possession of a certain piece of land, the same being more fully described in a petition and map on file in your office and numbered 386, and that said lot of land is joined on the north and west by a lot which your petitioner had sold to Drs. Brooks and Hukill previously to filing his said petition; that said owners of said adjoining lot had covered the same with a house known as the institute building and had, before your petitioner was aware of their intention,

extended said buildings so as to cover some 15 or 20 feet of his said lot; that the owners of said institute building have recently rented the same to Mrs. Nancy Davis to be used as a hotel or boarding-house, and that she is now in possession of the same.

43 Your petitioner would further show that within the last week she has placed on a portion of said ground a quantity of lumber and has this morning commenced work with a view of erecting a building in rear of said institute building and covering a portion of said land claimed by your petitioner and described in his petition; that your petitioner this morning saw and conversed with said Nancy Davis and one Shaw, who now claims to be the owner of said institute building, and forbid their erecting said building; that said Shaw turned the responsibility over to Nancy Davis, and she declared her intention of putting up said building in defiance of your petitioner. Your petitioner respectfully asks that an order preventing the erection of said building be issued against Nancy Davis, Shaw, and M. M. Hukill and all others interested in said building, and that your petitioner's rights be protected until his petition can be finally passed upon.

GEO. BELDING.

Sworn to and subscribed before me this 18th day of February, 1878.

AARON H. CRAGIN,
Commissioner.

Endorsed: Complaint of George Belding. Claim No. 386. Given in testimony in claim of Geo. Belding, No. 386, before the Hot Springs commission. A. H. Cragin, clerk.

44 HOT SPRINGS COMMISSION, *January 10th*, 1878.

In the Claim of GEORGE BELDING. No. 286.

GEORGE BELDING sworn and examined:

Q. State your name, age, and residence.

A. George Belding; I am forty-five; live at Hot Springs, Arkansas, and have been here since 1852.

Q. If you have a claim on this reservation, state whether it is correctly described in your petition.

A. It is.

Q. State how you came into possession of it.

A. I had known this tract of land a long time. I went into possession of it in 1858. There was a house on it with four rooms. There was a rail fence around it when I bought it; there was a garden enclosed with a picket fence, and before the war there was a fence entirely around it. My claim embraces something like ten acres. At that time it was all embraced in a fence. I and my family have occupied these premises since 1858 except for a time during the war. During the war I had a family in the house representing me. Since the war the fence has not been kept up. The first fence was around different lots and some of them have been destroyed.

I did not renew them until the spring of 1874, when I built another fence clear around it. It was a temporary pole fence to designate my boundaries. I have a house there now which is used as a residence. It has five rooms in it and a kitchen and two or three outhouses. I have a garden place enclosed with a picket fence and some other is enclosed. A portion this side of my house I have enclosed with a good high plank fence, the planks standing upon ends. This fence was there when I leased it to Mr. Bliss. There was a hole put in it, and I agreed with him to cut an alley for him so that he could get to his place.

45 It has been all destroyed by people tearing the planks off from it. In filing this petition I succeeded to my wife's possession, with her consent. My mother, with myself, purchased the place. At the time of her death she was living at Major Gaines'. I have been in possession since the 20th of December, 1865; in undisputed and peac-able possession.

That portion of the plat marked Mary Irons I lay no claim to. I made a sale to Mollie Jones, 45 feet front, running back 100 feet. This 45 feet north of the place marked on my map is Mollie Jones'. I have sold this since the map was made. The place where the medical institute is I sold to these parties, Briggs and Huckle. They have more ground than I sold them. I staked off a part there in about a line with the front of Cassell and Pride's house, and measured back twenty-five feet from that. Dr. Huckle contended that I said 25 feet south of Pride's house. I sold him running back 75 feet from the street. I do not claim 25 feet wide running back 75, where the medical institute is. There is an alley here that Mjor Gines had left out above the institute, between that and the Clyde building, but he waived all claim to that. The improvements on this lot of ground that I claim as they now stand were just the same on the 24th of April, 1876, with the exception that this wagon yard has had some additions made to it since. The improvements claimed by me are about $2,000 in value.

This is a lease from George Belding & Amanda Belding to Frank Flynn, dated April 24th, 1874.

By Mr. RICE: There is a lease in evidence?

The WITNESS: Mr. Flynn has no other right of possession except what he derives from this lease. Prior to the receiver coming here he did not keep his rent up. He paid quarterly, in advance, until July, 1875. He made payment in July up to October, 1875. After October he made no payments. In addition to this 45 feet where he built his house and stone wall in front he fixed some soil and

46 made a little front wall. His wall extended three feet over the line, and we made an agreement for him to pay $13 rent. He paid that once, on the 25th of April, the year after he leased. It was the only payment he made on that. A. J. Hill has a claim there by virtue of a lease of a house. This lease is dated November 6th, 1876, and it is the last lease given. It was made since April 24th, 1876. In the spring of 1876, shortly before the decision was made, James came to me and asked permission to put up a house in my front yard to do business in, as a particular favor, and said

if I didn't do it he would have to leave. As I felt friendly to him, I agreed to and did it in this way: He was to put the house up for a year's use of the ground. He put the house up by contract for me, and it cost me $96. He acknowledged that I had advanced the price in the leased ground for putting up the house. I leased the ground for $96 in advance, and acknowledged the receipt of the money. This is the lease dated April 1st, 1876.

Mr. RICE: Both leases appear offered in evidence, with leave to withdraw after leaving copies.

The WITNESS: This lease was to extend to April, 1877, but about the first of November this man Helle went into partnership with James, and wanted a large house in which to operate, and then the old part was cancelled and a new lease made. They were to pay me for the additional ground from the end of the prior lease. They were to pay me $13.50 a month. The second lease superseded the first one. With regard to the Mollie Jones claim, Mr. Way came to me, acting as agent for this woman, and wanted to buy a lot for her. I sold her 20 feet front on the creek, running back 60 feet, for $50. She paid me $25 down, and was to pay the balance as she could.

There was a limitation conditional as to how the balance was to be paid. We both signed it, and left it in possession of Lord. When she had paid me $25 and received receipts she was to take the receipts to Mr. Lord and get the deed. She paid me until she lacked ten dollars, and did not pay the rest. Mr. Lord objected,
47 and made me interline the contract that in case it fell back to me I had to pay her back the purchase-money. This instrument of writing was left in the hands of Mr. Lord, and he has lost it. It went on in this way until the receiver came, and she went to him and got him to survey off for her 50 feet front, running back a hundred feet, and put improvements on mine as well as hers, if there was any hers, and finally sold to John Gillis. She put these improvements on there herself. She didn't improve outside of the ground first sold her until after the receiver came. I am willing to refund the money and take the land if she wishes, or she may take it. I am willing to leave the matter to the commissioners.

Q. When did you make that lease to Heckle and Roots?

A. Some time during the summer—I believe in the summer of 1877. Their claim is included in this map and belonged to me at that time. I had asserted the claim to that claim ever since 1858. The Mollie Jones claim was on my claim also. It was sold to her. I have had it in my possession ever since 1858, and the same of the Huckle and Roots claim and the other land that I have sold before. I came into possession of this claim by purchase from my mother and Mrs. Runyon. That is the Runyon property that is marked out in this map, with the exception of what has been sold off. There is no other claim connected with this except what came out of the Runyon claim. The claim now made by me is out of the Runyon. I went to Texas some time during the war and left Mr. Lawson Runyon to take care of my property as my agent. I arrived home from Texas the 20th of December, 1865. Mr. Runyon then went out and I have had possession ever since. He was in my house

that I built in 1871. This property was not leased of me by William Gardner. I sold the whole thing to William Gardner. I may have leased it from Gardner. I don't remember mailing a lease from Gardner to me to A. H. Garland, of Little Rock, although I may have done so. I did not buy it back by payment. Mr. Gardner gave me back a deed that I made him. Mr. Gardner paid me $1,000 for this ground, together with all the other property.
48 The property that I sold is included in this and other property on the reservation, and for her mill and my old storehouse and other property Mr. Gardner has made me a deed back.

By Mr. WALSH:

Q. State whether the premises now occupied by Frank Flynn is a part of the Runyon property originally.

A. It is. The fencing on this particular tract at the time I leased to Mr. Flynn was not worth $50.

Q. Was all the property that he now has enclosed owned by you when you leased to him?

A. It was. Mr. Flynn paid me rent from the time he leased up to 1875. He paid me in all—April, July, October, January, April, and July—$315 in all. The last payment he made in a good many mis-tatements. The last payment was in July, 1875—advance payment to October—$25. Since then he has paid me nothing.

I demanded payment. I got him to improve it. I told him I would not do it, as he made me promises of all kinds, but never paid. I waited, and when the receiver came I could not put him out. I did not pay a cent for erecting that building there now; it is forfeited to me for non-payment of rent. I own it by *tte* forfeiture. I sold to Mr. Gardner in 1871 and did not buy it back, but the court had set aside the sale as fraudulent. I do not know whether the deed I made him is recorded in this county. I had no idea that he made any claim for this property; it was a private sale between me and Mr. Gardner, and the bankrupt court set it aside as fraudulent. There are between five and six acres in this claim now. I did not have a building on this particular lot that is now occupied by Mr. Flynn, but I had it enclosed as a garden and cultivated it successfully. I put it in vegetables at the time I rented it to Flynn.

? Q. I understand you to say that the bankrupt court set aside this deed from you to Gardner for fraud. Was there any fraud in that transaction between you and him? This deed to Mr. Gardner was made in February, 1875. In the spring of that year you
49 went into bankruptcy. Prior to the making of that deed between you and Mr. William Gardner was there any understanding and agreement by and between you and Mr. Gardner to make this deed for the purpose of covering up your property and securing it from the reach of your creditors at that time?

A. It was a sale to accommodate me. I was to sell him the property and he was to sell it back to me when I was able to buy it. I think he told me he would do so. There was no discussion between him and me then in relation to my existing indebtedness at that time. Previous to that time I had borrowed a thousand dol-

lars from him, but I have no recollection of executing to him any mortgage to secure the payment of this one thousand dollars, bearing interest at 2½ per cent. per month. I absolutely sold him the property. I do not remember whether he surrendered to me the note for the one thousand dollars or not. I may have made this mortgage.

Q. State whether or not at the time of this sale to Gardner there was any understanding between you and him to cover up and keep it from the reach of your creditors.

A. There was an understanding that I was to sell him this property and buy it again; it was a matter of accommodation to me, to save something for my family out of the wreck. On the day I received the money I considered it ar Gardner's until such time as I could buy it back and pay the money to him. No fraud was intended at the time this took place between me and him. I conveyed six or eight times as much property as the money would cover until I could raise the money and pay it back. I do not recollect of a conversation I had—I had a good many. I never have bought it back, because the sale was annulled by the bankrupt court.

By Mr. WALSH:

Q. You have never paid Mr. Gardner any of this thousand dollars?

A. I never have paid him a nickel.

50 By Mr. RICE:

Q. Were you in possession of this tract of land, claiming it in your own right, when you made the sale to Frank Flynn, Hill, and Mollie Jones?

A. I was. Gardner at that time had not set up any claim against me. This land was set apart as a homestead under the proceedings before the court. This is the exemption certificate.

Mr. Rice asks leave to file the copy of the exemption certificate.

Q. The property exempted in this certificate is the same property—a portion included in the deed from you to Gardner?

A. It is just the same piece of ground and is the same on the map there on my petition.

SEVERE C. LAW sworn and examined:

Q. State your name, age, and residence.

A. My name is Severe C. Law; I am 36, and live at Hot Springs, Arkansas.

Q. State what you know about this claim of George Belding.

A. I am acquainted with George Belding and Mollie Jones. I know of a contract made between them with regard to a piece of land. I think the land was 20 x 60. Mollie Jones had some money deposited with me—$50—and asked me to take care of it. She came in one day, and she said she was about to buy a lot from Mr.

Belding and inquired what I thought it was worth. She wanted me to go down and look at it. I told her I thought it was cheap enough. It is the same piece represented on the plat attached to Mr. Belding's petition. Mr. Belding drew up an agreement and it was brought to me. There was a trade made, and she gave him $50 at the time and there was $25 to be paid afterwards. I think she did not pay the balance. Afterwards she wanted the money refunded in accordance with the contract. The agreement was a kind of conveyance acknowledging the receipt of $50. I made some interlineations in the instrument of writing. This is the deed which was left in my possession and was to be delivered upon the payment of the balance. She came to me and brought the
51 paper back. When the receiver was here he said that he wanted to see it, and I gave it to her and thought that she had brought it back; it was to be brought back. It was not delivered to her, because she had paid the money.

JACOB W. PARKER sworn and examined:

Q. State your name, age, and residence.

A. My name is Jacob W. Parker; I am 66, and reside at Hot Springs, Arkansas.

Q. State what you know of the claim of George Belding.

A. I am acquainted with the land described in the plat accompanying the claim of George Belding. It embraces all the claim of Mr. Flynn, George Belding, and Taylor, running down to some ground owned by the Karatofskys—four or five acres altogether. I knew the ground when it was all laid out. George Belding has been in possession there since 1858. I helped him build his house. It was a log house, and where the logs crossed it was painted with white lead. This ground was enclosed then where the house was. I have seen a rail fence there around the place after he went there. He continued in possession down to the war and resumed possession after the war, and had an agent there during the war. He has continued in possession down to the present time with his family. I have seen Mr. Belding there every day. He was in possession from 1874, and continued in that possession until after the 24th of April, 1876. Previous to that time it was enclosed in a fence. There was a fence near where Mr. Flynn's house is, which enclosed a garden. The fence has been torn down for some reason or other. The fence was a good substantial one, seven or eight feet high.

WILLIAM H. GAINES sworn and examined:

Q. State your name, age, and residence.

A. William H. Gaines; am 86, and live at Hot Springs, Arkansas.

52 Q. State what you know of the claim of George Belding.

A. I have known the land where George Belding lives twenty-five years. George Belding has been in possession from some time before the war. He had a family living there most of the time from then to the present time. He built the present dwelling-house there. He was gone awhile to Texas and left the place in

charge of an agent. The land has been enclosed and a portion of it cultivated all the time.

By Mr. WALSH:

Q. State whether Mr. Belding is related to you by blood or otherwise.

A. He is a brother of my wife and is one of the Belding heirs.

EMILY RUNYON sworn and examined:

Q. State your name, age, and residence.

A. Emily Runyon; am 50, and live at Hot Springs.

Q. State what you know of the claim of George Belding.

A. My husband's name was Lawson Runyon; he is now dead. I know the land where George Belding resides. He bought from my husband twenty years ago. He and his family have generally been in possession from that time to this present. At the time I sold it was all fenced. There was a house on it then. I was living there myself. I occupied it and a portion of the time during during the war for Mr. Belding and was taking care of it, and it was turned over to him on his return from the south.

Endorsed: No. 386. Claim of Geo. Belding. Geo. Belding, S. C. Law, J. W. Parker, W. H. Gaines, Emily Runyon. Given before the Hot Springs commission. A. H. Cragin, ch.

Endorsed: Filed as March 10th, 1886. Deposition of Geo. Belding in case of Geo. Belding and Amanda Belding against Frank Flynn and M. McDonald. Charles D. Greaves, not. pub.

(Here follows diagram marked p. 52½.)

53 United States Circuit Court, Eastern District of Arkansas.

GEORGE BELDING and AMANDA BELDING, Plaintiffs,
vs.
FRANK FLYNN and M. MCDONALD, Defendants.

Notice to Take Depositions.

To John J. Moore, attorney of record of defendants:

You are hereby notified that depositions of witnesses to be read in evidence in the above-entitled cause on the part of the plaintiffs will be taken at the office of R. G. Davies, in the city of Hot Springs, county of Garland and State of Arkansas, on the 10th day of March, 1886, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon, and that the taking of the said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

GEO. BELDING AND AMANDA BELDING,
By R. G. DAVIES, *Attorney.*

(Endorsed on notice:) Geo. & Amanda Belding *vs.* Frank Flynn and M. McDonald. Notice to take depositions. State of Arkansas,

county of Garland. I have this 8th day of March, 1886, served the within notice by delivering a true copy of the same to John J. Moore, attorney for the within-named defendants. Fees, 85c., paid by plaintiff-. W. F. Housley, sheriff, by Cyrus Johnson, D. S.

54 The deposition- of George Belding and J. T. Morris, taken on the 10th day of March, 1886, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of R. G. Davies, in the city of Hot Springs, in the county of Garland, to be read as evidence in an action between George and Amanda Belding, plaintiffs, and M. McDonald and Frank Flynn, defendants, pending in the United States circuit court for the eastern district of Arkansas.

GEORGE BELDING, having been duly sworn, deposes and says:

My name is George Belding; age, 53 years, and I reside in Hot Springs, Arkansas. I am the same George Belding who testified before the Hot Springs commission in claim No. 386, a certified copy of the petition in which before said commission, together with the evidence, is filed herewith and made part hereof, marked Exhibit "A."

The copy of my testimony on page 6 makes me say that I leased to Mr. Bliss, which should read Mr. Flynn. I testified that I leased to Mr. Flynn.

Q. State whether you made any settlement or arrangement of the Gardner matter spoken of in your evidence since the commission closed its labors at Hot Springs.

A. Yes; I have paid all that I owed him—about twelve or thirteen hundred dollars—and all papers that I ever made to him have been returned.

No cross-examination.

GEORGE BELDING.

STATE OF ARKANSAS, }
County of Garland. }

I, Charles D. Greaves, a notary public within and for Garland county, duly commissioned and acting, do certify that the foregoing deposition of George Belding was taken before me and was read to and subscribed to by him in my presence at the time and place and in the action mentioned in the caption, the said Belding having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statements were reduced to writing by
55 me in his presence, the plaintiff, and his attorney, R. G. Davies, and John J. Moore, attorney for defendants, being present at the examination.

Given under my hand and seal this 10th day of March, A. D. 1886.

[L. S.] CHAS. GREAVES,
Notary Public.

(Endorsed:) Opened and published. Filed March 15th, 1886. Ralph L. Goodrich, clerk.

The depositions of George Carlin and M. C. McDonald, taken on the 12th day of September, 1885, at the office of M. C. McDonald, room 31, at No. 117 East Monroe street, upstairs, in the city of Chicago, State of Illinois, to be read in evidence on behalf of the *department* in an action between George Belding and Amanda Belding, plaintiffs, and Frank Flynn and M. C. McDonald, defendants, pending in the United States circuit court for the eastern district of Arkansas.

GEORGE CARLIN, a witness, being produced and by me duly sworn, deposes and says:

1st. To the first interrogatory he answers: Name, George Carlin; age, 38 years; residence, Chicago, Illinois.

2nd. I am acquainted with Frank Flynn and M. C. McDonald.

3rd. I was present when defendant Flynn sold a certain piece of property in Hot Springs, Arkansas, to defendant McDonald.

4th. I was at Hot Springs, Arkansas, in the month of July, 1884, and at the request of M. C. McDonald examined the piece of property described as lot 9, in block 68, of the Hot Springs reservation, and when I returned to Chicago, Illinois, I advised him to
56 buy said lot, believing it to be a very cheap piece of property. The sale was made and deed for the lot given to M. C. McDonald on the 21st day of July, 1884. The amount of the consideration was eighty-five hundred dollars ($8,500.00), and that amount was paid in money in my presence to defendant Flynn by defendant McDonald at his office, No. 176 South Clark street, Chicago, Illinois, on the 21st day of July, 1884.

5th. I know of no one claiming to be the owner of said lot at the time of said sale except the defendant Flynn.

6th. I never knew, until informed by M. C. McDonald of the Belding suit, that any one set up a pretended title to the lot except defendant Flynn.

GEORGE CARLIN.

M. C. MCDONALD, being produced and by me duly sworn, deposes and says:

1st. Name, Michael C. McDonald; age, 45 years; residence, Chicago, Illinois.

2nd. I am acquainted with defendant Frank Flynn.

3rd. On the 21st day of July, 1884, I purchased of Frank Flynn a piece of property situated at Hot Springs, Arkansas, and known and described as lot 9, in block 68, of the Hot Springs reservation. The amount of the consideration was eighty-five hundred dollars ($8,500.00), and that amount I paid said Flynn in money in my office at No. 176 South Clark street, Chicago, Illinois, *to* the 21st day of July, 1884, in the presence of George Carlin.

4th. I was informed by Flynn and Carlin that there was no dis-

county of Garland. I have this 8th day of March, 1886, served the within notice by delivering a true copy of the same to John J. Moore, attorney for the within-named defendants. Fees, 85c., paid by plaintiff-. W. F. Housley, sheriff, by Cyrus Johnson, D. S.

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My name is George Belding; age, 53 years, and I reside in Hot Springs, Arkansas. I am the same George Belding who testified before the Hot Springs commission in claim No. 386, a certified copy of the petition in which before said commission, together with the evidence, is filed herewith and made part hereof, marked Exhibit "A."

The copy of my testimony on page 6 makes me say that I leased to Mr. Bliss, which should read Mr. Flynn. I testified that I leased to Mr. Flynn.

Q. State whether you made any settlement or arrangement of the Gardner matter spoken of in your evidence since the commission closed its labors at Hot Springs.

A. Yes; I have paid all that I owed him—about twelve or thirteen hundred dollars—and all papers that I ever made to him have been returned.

No cross-examination.

GEORGE BELDING.

STATE OF ARKANSAS, }
County of Garland. }

I, Charles D. Greaves, a notary public within and for Garland county, duly commissioned and acting, do certify that the foregoing deposition of George Belding was taken before me and was read to and subscribed to by him in my presence at the time and place and in the action mentioned in the caption, the said Belding having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statements were reduced to writing by
55 me in his presence, the plaintiff, and his attorney, R. G. Davies, and John J. Moore, attorney for defendants, being present at the examination.

Given under my hand and seal this 10th day of March, A. D. 1886.

[L. S.] CHAS. GREAVES,
Notary Public.

(Endorsed:) Opened and published. Filed March 15th, 1886. Ralph L. Goodrich, clerk.

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3rd. I was present when defendant Flynn sold a certain piece of property in Hot Springs, Arkansas, to defendant McDonald.

4th. I was at Hot Springs, Arkansas, in the month of July, 1884, and at the request of M. C. McDonald examined the piece of property described as lot 9, in block 68, of the Hot Springs reservation, and when I returned to Chicago, Illinois, I advised him to
56 buy said lot, believing it to be a very cheap piece of property. The sale was made and deed for the lot given to M. C. McDonald on the 21st day of July, 1884. The amount of the consideration was eighty-five hundred dollars ($8,500.00), and that amount was paid in money in my presence to defendant Flynn by defendant McDonald at his office, No. 176 South Clark street, Chicago, Illinois, on the 21st day of July, 1884.

5th. I know of no one claiming to be the owner of said lot at the time of said sale except the defendant Flynn.

6th. I never knew, until informed by M. C. McDonald of the Belding suit, that any one set up a pretended title to the lot except defendant Flynn.

GEORGE CARLIN.

M. C. MCDONALD, being produced and by me duly sworn, deposes and says:

1st. Name, Michael C. McDonald; age, 45 years; residence, Chicago, Illinois.

2nd. I am acquainted with defendant Frank Flynn.

3rd. On the 21st day of July, 1884, I purchased of Frank Flynn a piece of property situated at Hot Springs, Arkansas, and known and described as lot 9, in block 68, of the Hot Springs reservation. The amount of the consideration was eighty-five hundred dollars ($8,500.00), and that amount I paid said Flynn in money in my office at No. 176 South Clark street, Chicago, Illinois, *to* the 21st day of July, 1884, in the presence of George Carlin.

4th. I was informed by Flynn and Carlin that there was no dis-

pute, no one claimed the lot except Flynn, and that there was no incumbrance whatever when I purchased said lot from said Flynn. I am now informed that George Belding and Amanda Belding pretend to have a title to said lot. I first knew of said pretended claim to said lot when I received notice of suit by said George Belding and Amanda Belding, the plaintiffs.

MICHAEL C. McDONALD.

57 To the cross-interrogatories propounded by the plaintiffs the witness M. C. McDONALD deposes and says:

1st. To the first interrogatory he answers: I am now engaged in the buying and selling of real estate. For the ten years prior to May 1st, 1885, I was engaged in the wholesale and retail liquor business.

2nd. I never heard of the Hot Springs reservation, in Garland county, Arkansas, before I purchased of Frank Flynn.

3rd. I was never at Hot Springs, Arkansas, in my life.

4th. Before I purchased of Flynn I was not familiar with the history of the Hot Springs reservation and do not remember having heard of it before that time.

5th. I went to an attorney, John A. Graham, who had an office with Mr. A. S. Tude, at No. 79 Clark street, Chicago, Ill., and told him I had purchased the lot and wanted a deed written therefor, and he wrote a quitclaim deed from his own choice and not from any directions or choice of mine.

6th. There is no understanding between Flynn and myself not contained in the deed under which I claim title.

7th. Flynn applied to me to sell the land and the trade was made through Mr. George Carlin.

8th. Flynn called at my office and told me he was anxious to sell the land and would sell it at a bargain, as he had immediate use for the money. He further said that he had at one time been offered twelve thousand dollars ($12,000.00) for it and refused the offer, as he did not at that time need the money, and besides he thought the property would increase in value. He finally agreed to sell me the property for eighty-five hundred dollars cash. Before purchasing I had written to Mr. George Carlin, who was at Hot Springs,
58 Arkansas, concerning the location and value of the property. When he returned to Chicago, a few days after receiving my letter, he advised me to buy the property, as he considered it very cheap at eighty-five hundred dollars.

9th. I never saw the property before the purchase. Mr. Carlin, who was acting as my agent, saw and examined the property.

10th. I paid Mr. Flynn in greenbacks eighty-five hundred dollars ($8,500) for the land.

11th. I have received no letter from Frank Flynn in which the property is mentioned.

13th. I have not lost or destroyed any letters from Frank Flynn or others in regard to this property.

14th. John A. Graham wrote the deed from Flynn to myself.

15th. Frank Flynn did not tell me he had ever leased the prop-

erty of Belding, or that they ever had any controversy about the land.

16th. I am not personally acquainted with John J. Moore, of Hot Springs, Arkansas.

17th. I have no letters of said Moore in regard to the purchase or sale of the property in controversy.

18th. There has been no one present at the taking of these depositions except the notary public and myself.

19th. I do not know now and did not know at the time of purchase of the property the actual value thereof, only what Flynn and Carlin represented to me.

MICHAEL M. McDONALD.

(Endorsed:) Opened and published by order of court September 28th, 1885. Ralph L. Goodrich, clerk, by A. J. Hunter.

59 And on January 18th, 1888, as follows:

GEORGE BELDING and AMANDA BELDING
vs.
FRANK FLYNN and MICHAEL McDONALD. } 712.

Final Decree.

Now, on this day, came the said plaintiffs, by their attorney, R. G. Davies; come also the defendants, Frank Flynn and Michael McDonald, by J. McClure, their attorney, and the special master having heretofore filed his report herein, and this cause coming on for a hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein—

It is ordered, adjudged, and decreed that the exceptions of the defendant McDonald, except as to item for one hundred and forty dollars paid to the Government, which is by consent allowed as a credit to defendant Flynn, are overruled; and thereupon the court states the account between the parties as follows: Defendant Flynn is indebted to the plaintiffs for the rent of the property from the date of the award to the date of his sale to the defendant Michael McDonald, according to the terms of the lease, in the sum of nine hundred and twenty-two dollars and twenty-one cents, and interest thereon, amounting to two hundred and eleven dollars and sixty-seven cents, and the amount of a certain judgment paid by defendant McDonald and credited to him by plaintiffs, amounting to four hundred and seventy-eight dollars and ninety-four cents; the defendants, Michael McDonald and Frank Flynn, are indebted to the plaintiffs in the sum of eighteen dollars and eighty-eight cents, and interest thereon, amounting to three dollars and fifty-eight cents, being the amount of rent, as per the terms of the lease, from the date of the sale to McDonald to the filing of the bill in this case; also the sum of one thousand nine hundred and forty-one
60 dollars and sixty-seven cents, and interest, amounting to one hundred and eighty-eight dollars and thirty cents, being the amount of the rent on said property since the filing of the bill herein

to the date of this decree; the total of which sum is seventeen hundred and twelve dollars and eighty-two cents as to said defendant Frank Flynn and two thousand one hundred and fifty-two dollars and forty-three cents as to said defendants, Flynn and McDonald, jointly. The defendant Frank Flynn is entitled to a credit of the sum of the amount paid the Government for the land and interest, amounting to one hundred and eighty-nine dollars and forty cents; the amount of taxes paid by said Flynn, amounting to two hundred and forty-eight dollars and ten cents, and interest, amounting to fifty-four dollars and fifteen cents; total, four hundred and ninety-one dollars and sixty-five cents. Defendant McDonald is entitled to the sum of one hundred and fifty-four dollars and interest thereon, amounting to eight dollars and thirty-cents, for taxes paid, and four hundred and twenty-four dollars and sixty-five cents, amount of judgment lien on said land, and interest, fifty-three dollars and twenty-nine cents; total, six hundred and forty-one dollars and twenty-four cents; which amount taken from the several amounts due from the said defendants leaves a balance due the plaintiffs of one thousand two hundred and twenty-one dollars and seventeen cents from the said Flynn and one thousand five hundred and eleven dollars and nineteen cents due from the said McDonald and Flynn.

It is therefore considered, ordered, adjudged, and decreed that the plaintiffs, George Belding and Amanda Belding, do have and recover of and from said defendants, Michael McDonald and Frank Flynn, the possession *od* lot nine, in block sixty-eight, of the Hot Springs reservation, in Garland county, Arkansas, and that a writ of possession issue, and that serving a copy of this decree shall be the writ.

It is further ordered, adjudged, and decreed that the said plaintiffs do have and recover of and from the defendant Frank Flynn the sum of one thousand two hundred and twenty-one dollars
61 and seventeen cents, and of said defendants, Frank Flynn and Michael McDonald, the sum of one thousand five hundred and eleven dollars and nineteen cents and all costs of this suit, and that they have execution therefor.

It is therefore ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein, and the defendant Michael McDonald prays and appeal to the supreme court, which is granted, and it is ordered that upon his executing and filing a bond, within the time and conditioned as prescribed by law, in the sum of five thousand seven hundred and sixty-two dollars and a cost bond for the sum of two hundred and fifty dollars, with good and approved security, that the decree herein be superseded pending said appeal; and it appearing that this judgment should have been entered upon the eighteenth day of November, 1887, it is entered now for then.

62 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit,

hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 21st day of June, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and twelfth.

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: Case No. 13,583. E. Arkansas C. C. U. S. No. 379. Michael McDonald, appellant, *vs.* George Belding & Amanda Belding, his wife. Filed July 19, 1889.

Office Supreme Court U. S.
FILED.
APR 23 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

MICHAEL McDONALD
vs.
GEORGE BELDING *et al.*
} Term No. 379.

BRIEF FOR APPELLANT.

This case differs from the other Hot Springs cases in this: First, that the land from which the lot was severed was never claimed by either Hale, Rector or Gaines, or any one else "under an assertion of title or right of pre-emption," and second, because McDonald claims to be an innocent purchaser, without notice of the appellees' claim, for value.

The facts are, that Frank Flynn and the appellees both filed claims before the Hot Springs Commission to be awarded the right to purchase the lot in controversy. The appellees claimed the right to purchase the lot on the following grounds:

"That he purchased the same from Lawson Runyan, and enclosed it in 1858; that since the war he has again enclosed

it with a good fence; that most of it has been for several years improved and in cultivation; that he had full and peaceable possession of the entire tract on the 24th of April, 1876, and for many years prior thereto, and all of the time since." [Printed Record, p. 26.]

Flynn claimed the right to purchase on the following grounds: "That he took possession of the premises in the month of May, 1874, and erected a valuable improvement thereon, to wit: A dwelling house, where he has resided, and has been in peaceable possession of said premises since the above date." [Printed Record, p. 6.]

Flynn was adjudged the right to purchase the lot. He did purchase it, and on the 21st of January, 1881, a patent was issued to him therefor. [Printed Record, p. 13.]

On the 21st of July, 1884, Flynn sold and conveyed the lot to McDonald, the appellant, in consideration of $8,500, by quit claim deed.

On the 25th of August, 1884, three years and seven months after the issue of the patent to Flynn, and thirty-four days after the purchase by McDonald, the appellees commenced suit against Flynn and McDonald. The prayer of the bill is that the deed from Flynn to McDonald be cancelled, and that they be decreed to hold said lot in trust for the appellees. [Printed Record, pp. 3-4.]

The bill charges, [Printed Record, p. 3] "that said defendant Flynn has recently executed to the defendant McDonald, without consideration, and, for the purpose of defrauding plaintiffs, a fraudulent deed of conveyance, purporting to convey said lot to him for $8,500, when in fact, nothing was paid by him for it; that McDonald knew, at the time of

making said deed, and of the said pretended purchase, of the tenancy of the said Flynn, and of the rights of the plaintiffs." [Printed Record, p. 3.]

The appellees failed to offer any evidence in support of this allegation, and the allegation is denied by the answers of Flynn and McDonald.

Flynn, in his answer, [Printed Record, p. 11], denies, "that the sale of said lot by him to McDonald was without consideration, or for the purpose of defrauding plaintiffs, or either of them," and avers "that he sold said land to McDonald for $8,500, because he needed the money and because he thought it advantageous to him to do so."

McDonald, in answering [Printed Record, p. 12], denies all knowledge of the claim set up by the appellees before the Hot Springs Commission, and of their adjudication, and avers, the issue of the patent to Flynn and "that on the 21st of July, 1884, finding the title to said lot to be in defendant Flynn, and knowing nothing whatever of plaintiffs' alleged claim to it, bought it from him (Flynn) for the sum of $8,500 in cash, and obtained from Flynn a quit claim deed thereto; that he never heard of any claim of plaintiffs until he made said purchase and paid said money; that plaintiffs never, until said purchase, sued for said lot, or put any claim of record; that said deed and sale to this defendant were not made without consideration, nor to defraud plaintiffs, but were made in good faith."

McDonald testifies [printed Record, pp. 35-6]: "I was never at Hot Springs in my life; never heard of the Hot Springs reservation before I purchased from Flynn. On the 21st of July, 1884, I purchased of Frank Flynn the lot in controversy. The consideration paid was $8,500, and that amount I paid said Flynn in money in my office on the 21st of July, 1884, in the presence of George Carlin. Was informed by Flynn and Carlin that there was no dispute, that no one claimed the lot but Flynn, and that there was no in-

cumbrance whatever when I purchased. Am now informed that George and Amanda Belding pretend to have title to said lot. I first knew of said pretended claim to said lot when I received notice of suit."

Cross-examined.

"Before I purchased of Flynn I was not familiar with the history of the Hot Springs reservation, and do not remember to have heard of it before that time. * * * There is no understanding between Flynn and myself not contained in the deed under which I claim title. Flynn called at my office and told me he was anxious to sell the land, and would sell it at a bargain, as he had immediate use for the money. He said that he had at one time been offered $12,000 for and refused the offer, as he did not at that time need the money. He finally agreed to sell me the property for $8,500 cash. Before purchasing I wrote to George Carlin, who was at Hot Springs, Ark., concerning the location and value of the property. When he (Carlin) returned to Chicago, a few days after receiving my letter, he advised me to buy the property, as he considered it very cheap at $8,500. * * * I paid Flynn, in greenbacks, $8,500 for the land. John A. Graham wrote the deed from Flynn to myself. * * * Told him I had purchased the lot and wanted a deed written therefor, and he wrote a quit claim deed from his own choice and not from any direction or advice of mine."

George Carlin testifies [Printed Record, p. 35]: "I was at Hot Springs, Ark., in the month of July, 1884, and at the request of McDonald examined the property in dispute. When I returned to Chicago I advised him to buy the lot. The sale was made and deed given for the lot on the 21st of July, 1884. The consideration paid was $8,500, and that amount was paid in money, in my presence, to Flynn by

McDonald, at his office on the 21st of July, 1884. I never knew, until informed by McDonald of the Belding suit, that any one set up a pretended title to the lot except Flynn."

Upon the pleadings and proof thus stated, the Court below was of opinion that because McDonald accepted a quit claim deed he could not be regarded as a *bona fide* purchaser for value, without notice—in other words, that no matter what the proof might be as to the *bona fide* of the purchase, if from an inspection of *the muniments of title* it appeared the deed was a quit claim, that this fact inhibited the holder of such a deed from becoming a *bona fide* purchaser, no matter what the proof might be.

In this we think the Court below erred, first, because the alienation of real property is regulated, not by any general rule of law, but by the law of the State in which it is situated; and second, because under the law of Arkansas a quit claim deed is as effectual to convey the entire estate as a deed with covenants of warranty.

I am aware of the fact that in some states a quit claim deed will not convey an *after* acquired title, and that for this reason a distinction is made between the efficacy of such a deed and one containing covenants of warranty; but this is not the case in Arkansas. Our statute declares: "If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, *or any less estate*, and shall not, at the time of such conveyance, have the legal estate in said lands, but shall afterwards acquire the same, the legal or equitable estate afterward acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance."

Sec. 642, Mansfield's Digest of Ark., p. 276.

Anterior to the enactment of this statute, the *after*-acquired title would not pass under a quit claim deed, but only such as the grantor possessed at the time of the execution of the deed. The Supreme Court of Arkansas, in speaking of the effect of this statute, said: "The enactment of our statute so modified the old doctrine as to place all deeds, purporting to convey an estate, in fee simple, or less estate, upon the same footing."

Crittenden vs. Johnson, 14 Ark., 463.

In *Bagly vs. Fletcher, 44, Ark., 160,* the Supreme Court of Arkansas had occasion to discuss the character and effect of a quit claim deed, and the Court said:

"A quit claim deed is a substantive mode of conveyance, and is as effectual to carry all the right, title, interest, claim and estate of the grantor, as a deed with full covenants of warranty. * * * The covenants in a deed constitute no part of the conveyance, but are separate contracts. The title passes independently of them."

These authorities settle the question that a quit claim deed is just as effectual to convey title as a deed with full covenants of warranty. It follows then that in ascertaining whether one is a *bona fide* purchaser for value, without notice, the determination must be made, not from an inspection of a muniment of title, but from the *facts* in relation to the purchase.

Whether one who claims title under a quit claim deed can be regarded as a *bona fide* purchaser for value, without notice, has been settled by the Supreme Court of Arkansas, and the decision has become a rule of property.

The point was made in *Miller vs. Fraley & Greenwood, 23 Ark., 738,* that Greenwood could not claim protection as an

innocent purchaser, because he took a quit claim deed from Fraley, and the court said: "It is asserted to be law, that a vendee must claim under a general warranty deed to entitle him to the defense of innocent purchaser."

After citing what Judge Story said in *Flagg vs. Mann, 2 Sum., 560,* where Judge Story says: "I am not aware that any covenant of general warranty has ever been held necessary to entitle the purchaser to make the defense of innocent purchaser," the Supreme Court of Arkansas say: "We have been able to find no case in which it has been adjudged, nor is it asserted in the text-books that the purchaser must hold under a general warranty deed to entitle him to protection;" and Greenwood's title, under the quit claim deed, was held to be as valid to convey the estate and to avail him of the protection furnished to innocent purchasers for value, as though the deed had contained covenants of warranty.

This decision has stood unquestioned for more than thirty years, and during all that period the quit claim deed has been recognized by the bar and the courts to confer upon a purchaser, as against third parties, all the rights and defenses which one would possess who claimed under a deed with covenants of warranty, and this court is asked to overrule that decision and render the statute of Arkansas, in relation to the alienation of real propery, nugatory.

The appellees cite the case of *Witter vs. Biscoe, 13 Ark., 423,* as an authority that one cannot be an innocent purchaser for value, under a quit claim deed. No such question was presented by the record. The question was, whether under the terms of the contract found in the record, the contract would be satisfied with a quit claim deed, and the Court said it would not, but that the contract would only be satisfied with a deed for covenants of warranty.

The case of *Kountz vs. Davis, 34 Ark., 590,* is also cited in support of that theory. The question of innocent purchaser for value was not presented by the record, what the Court said, was: that a quit claim deed would not be construed to convey a subsequently acquired interest, which came by *inheritance.*

The case of *Bagley vs. Fletcher, 44 Ark., 164,* is cited, and the following quotation made from it: "They (quit claim deeds) do not necessarily imply that the grantor has any title. Operating innocently as to all others, they only estop him. They cannot be incompatible with any former alienation."

If counsel had informed the Court that the quotation is taken from a *dissenting* opinion, it would have saved me the trouble of calling the attention of the Court to an attempt to palm off a dissenting opinion on this court, as furnishing a rule of law in Arkansas. I desire to exonerate Judge Rose, of counsel for the appellees, from being a party to the attempt.

It is said, in the brief of the appellees, that this language, to wit: "No one taking a quit claim deed can stand in the relation of a *bona fide* purchaser," in the cases of Baker *vs.* Humphrey, 101 U. S. 495, and Dickerson *vs.* Colgrove, 100, U. S. 578, are cited.

Both of these cases came to this Court from the State of Michigan. It is not necessary to inquire what the law of Michigan is, or whether the doctrine announced in these cases is correct, as the alienation of real property, in the State of Arkansas, is not regulated by the laws of Michigan. Both of these cases turned upon whether the *facts* established an estoppel *in pais.* The Court found they did, and, instead of letting the case rest on the record, went outside and used the language quoted.

All of the cases where it has been held that one cannot be an innocent purchaser for value are bottomed on the case of *Oliver vs. Piatt, 3 How. 409.* No case can be found in the books that has led to the enunciation of as much bad law as Oliver *vs.* Piatt, nor can one be found that has been as much libeled. Independent of the deed mentioned in that case, Justice Story found from the *facts* that the person claiming under the quit claim deed was in full possession of all the facts affecting the title to the property. After making a finding of facts that would have defeated the claim of Williams as an innocent purchaser, if the deed had been one with full covenants of warranty, the learned justice says:

"Another significant circumstance is, that this very agreement contained a stipulation that Oliver should give a quit claim deed only for the tracts. In legal effect, therefore, they did convey no more than Oliver's *right, title* and *interest* IN THE PROPERTY, and under such circumstances it is difficult to conceive how he can claim protection as a *bona fide* purchaser, against any *title* paramount to that of Oliver, which attached itself as an unextinguished trust to the tracts."

Mark what is said, that the sale was an INTEREST IN the property. He is calling attention to the fact that it did not appear from the conduct of the parties, or the terms of the deed, that an ESTATE was to pass, but only an *interest* in an estate. This distinction is shown in *Flagg vs. Mann, 2 Sum., 560,* where he says: "If it is apparent from the whole transaction that the purchaser bought the *estate* under circumstances which demonstrate that he had no suspicion of the title not being perfect, as by giving a full price for an unquestionable and unquestioned fee-simple, it seems to me that *the absence of any covenants of general warranty* ought not to take away from him the common protection. He has, under such circumstances, at least an equal equity with a

person claiming under an outstanding and unknown trust, and if so, the legal title, combined with his equity, ought not to be destroyed."

The mistake that has been fallen into in relation to the case of *Oliver vs. Piatt*, probably originated with that class of Judges who fail to note the difference between a deed intended by the parties to convey *an estate*, and one that was only intended to convey an *interest* in an estate, and others doubtless have been mislead by the syllabus made by the Reporter, who seems to have had no conception of what was decided.

In *Colorado Coal and Iron Co. vs. United States, 123 U. S., 307*, it appears that the persons to whom the patents were issued conveyed to Jackson by deed with covenants of warranty, and that Jackson conveyed by deed of *quit claim* to the Coal and Iron Co. The Coal and Iron Co., *under a quit claim deed*, claimed to be *bona fide* purchasers for value, without notice, of the frauds alleged in the bill. This court held that the burden of proof to show that the Coal and Iron Co. had notice of the frauds was upon the United States, and that in the absence of proof showing such notice "the defense of *bona fide* purchaser for value, without notice, is perfect."

In the case at bar the plaintiff below offered no proof to show that McDonald had notice of the appellees' pretended equities.

The proof of McDonald shows that he bought and paid for the property, before the institution of this suit, in good faith, paying full value therefor, without any knowledge of the appellees pretended claim. Flynn had and held the patent three years and seven months. The record title was in him, and if it be conceded that a quit claim placed McDon-

ald on inquiry, there was nothing of record, in the county where the lands were situate that would have advised him of the appellees claim.

The proof made by the appellees in relation to rents is: "That there were no improvements upon the lot except two or three little cabins, and that their rental value was not more than two or three dollars per month apiece." [Printed Record p. 23].

Under this testimony the decree for rent ought to have been less than $450, yet the court decreed rent for over $3,200.

The exceptions to the Master's report will be found on page 24 of the Printed Record, and the overruling of the exceptions on page 37.

In conclusion it is submitted: 1st That McDonald should be regarded as a *bona fide* purchaser for value, without notice. 2d, That the appellees have failed to show an improvement made "under an assertion of title, or under claim of right of pre-emption." 3d, That under the rule laid down in the Rector–Gibbon case, that is, that the act of 1877 was passed for the benefit of the old claimants, who claimed the S. W. ¼ of Section 33, the appellees do not fall within that description. 4th, That the rents are excessive.

JOHN McCLURE,
For Appellant.

Office Supreme Court U. S.
FILED.
MAY 9 1891
JAMES H. M. KENNEY,
CLERK.

Supreme Court

OF THE

UNITED STATES.

J. M. McDONALD,
Plaintiff in Error,
vs.
AMANDA BELDING and
GEORGE BELDING.

BRIEF FOR AMANDA AND GEO. BELDING.

R. G. DAVIES, Attorney.

Williams, Thurber & Co., Printers, Helena.

Supreme Court

—OF THE—

UNITED STATES.

J. M. McDONALD,
Plaintiff in Error,
vs.
AMANDA BELDING and
GEORGE BELDING.

In Error to the United States Circuit Court, Eastern District of Arkansas.

The facts in this case are similar to those in Rector vs. Gibbon, 111 U. S., p. 276, with the exception that in the lease from Belding to Flynn there is an express covenant that Flynn (the tenant) will not claim under the act of 1877, and this is altogether a stronger case against the tenant.

See also Gaines vs. Molen, 41 Ark., 232.
Whitinghon vs. Southerland, 46 Ark., 285.

There is one feature of this case, however, which is not embraced in any of the above named cases. McDonald claims to have purchased the property in controversy for $8,000, after patent issued to Flynn, by a quit-claim deed, which he exhibits, with his answer, and that he is an innocent purchaser. George Belding was one of the original Belding heirs.

I submit that, if it be possible for a man to be an innocent purchaser of a Hot Springs title, he cannot be such under a quit-claim deed.

See Marshall vs. Roberts, 10 American Reports, 201, 78 Minn., 405.
May vs. Claire, 11 Wallace, 232.
34 Texas, 442.
Rogers vs. Burchard, 23 Texas, 447.
42 Maine, 502
Kountz vs. Davis, 34 Ark., 590.
Witter vs. Briscoe, 8 Ark., 428.
21 Ark., 289.

In 44 Ark., 164, Judge Aiken says: "They (quit-claim deeds) do not imply necessarily that the grantor has any title. Operating innocently as to all others, they only estop him. They cannot be incompatible with any former alienation." In the late case of Gaines vs. Summers, 50 Ark., 328, the Court holds that taking a quit-claim deed is notice.

The evidence of the man who made the trade for McDonald is evasive. He absolutely refuses to answer a single question upon cross-examination.

See also Sherwood vs. Moelle, 36 Fed., 438.
Minx vs. Mitchel, 22 Pacific, 708.
McAdow vs. Black, 6 Mont., 601.
Gest vs. Packwood, 34 Federal, 368.
Peters vs. Cartier (Mich.), 45 N. W., 133.
Laurens vs. Anderson, 1 S. W. Texas, 379.
Godard vs. Donana, 42 Kansas, 754.
Pettingill vs. Devin, 35 Iowa, 353.

In the case of Johnson vs. Williams, 1 American State Reports, 243, nearly all the authorities are listed, and among them the cases of Sanford Baker vs. George Humphry, 101 U. S., 495, and Dickerson vs. Colgrove, 100 U. S., 578.

In the two last cases this Court uses the following language, which is decisive of this question:

"A GRANTEE BY DEED OF QUIT-CLAIM IS NOT A BONA FIDE HOLDER."

"*No one taking a quit-claim deed can stand in the relation of a bona fide purchaser.*"

Respectfully submitted,

R. G. DAVIES,
Attorney for Defendant in Error.

Supreme Court, U.S.
FILED
APR 25 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 379.

MICHAEL McDONALD, APPELLANT,

vs.

GEORGE BELDING AND AMANDA BELDING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

Brief for Appellees.

U. M. ROSE,
G. B. ROSE,
For Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 379.

MICHAEL McDONALD, APPELLANT,

vs.

GEORGE BELDING AND AMANDA BELDING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

Brief for Appellees.

This case in all of its essential features is similar to the cases 302 to 315, inclusive, heretofore submitted.

Counsel for appellant are in error in supposing that our colleague, Mr. Davis, attempted to produce the impression that his citation from the opinion of Judge Eakin in *Bagley* vs. *Fletcher*, 44 Ark., 164, was taken from the sole or majority opinion of the court. The citation was from a dissenting opinion, but did not relate to any point upon which the judges differed.

The answer of McDonald is not sufficient to support the defense of innocent purchaser. It denies notice of the claim of the plaintiff until after the payment of the purchase-

money, but does not deny notice until after the making of the deed to defendant. This defect is necessarily fatal.

Byers *vs.* McDonald, 12 Ark., 286.
Miller *vs.* Fraley, 21 *id.*, 22.

The case of *Miller* vs. *Fraley*, 23 Ark., 738, is not against us. The deed in that case was not a quitclaim deed. The court said:

"The deed in question is in the usual form of an absolute conveyance in fee, *with a special warranty against any claim made or suffered by the vendor.*"

If such a warranty had been made in this case, of course it would have been broken. The question as to a quitclaim deed did not arise in that case and was not passed upon. The exact point was raised in *Gaines* vs. *Summers*, 50 Ark., 323, and was then decided as it has been decided by this court.

It will be observed that in *Miller* vs. *Fraley*, 23 Ark., 741, the court cited with approval the case of *Oliver* vs. *Piatt*, 3 How., 410, which is the leading authority on this subject.

The law seems to be settled beyond any question that one holding under a quitclaim deed is put upon inquiry.

Bigelow on Fraud, ch. VI, sec. 4, p. 315.

As shown by the citations made in the brief of our colleague, the decisions in this Court on this subject are emphatic and uniform. There is nothing in *Colorado Coal Co.* vs. *United States*, 123 U. S., 321. We do not perceive the origin of the ideas of counsel for appellant regarding any supposed quitclaim deeds in that case. On the contrary, the opinion expressly states as a ground for the decision that Jackson acquired title without notice through "warranty deeds." If it is true, as counsel assert, that Jackson afterwards conveyed to the coal company by quitclaim deed, the question now before the court was not involved in that case, for any one holding under Jackson by any kind of claim would

be clothed with all of his equities. This would have been so even though the coal company had had actual notice of the frauds charged.

2 Pom. Eq., sec. 754.

Boone *vs.* Childs, 10 Peters, 178.

In speaking of a quitclaim deed in *Gaines* vs. *Summers*, 50 Ark., 328, the court said:

"It was at least sufficient to have put appellants on inquiry, which, if they had prosecuted with ordinary diligence, would, doubtless, have led to actual notice of the facts as shown by the evidence in this case; but they prosecuted no inquiry, and it follows that they are not *bona fide* purchasers without notice."

This covers the whole ground. The rent of the house on the ground was not the sole criterion of the value of the rents.

We submit that the evidence fully sustains the finding of the master and the decree of the court below.

Also that as no exception was reserved at the hearing before the master, none could be taken in the court below. The authorities on this point are cited in our brief filed in cases 302 to 315, inclusive. They need not be repeated here.

Respectfully,

U. M. Rose,

G. B. Rose,

For Appellees.